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S. HRG. 99-1055

ADDITIONS TO THE BIG CYPRESS NATIONAL PRESERVE; ESTABLISHING THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA; DESIGNATING THE HORSEPASTURE RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM; AND AMENDING FLPMA

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2029/H.R. 4090, S. 2442/H.R. 4811, S. 2707/H.R. 2826, and H.R. 2921

SEPTEMBER 23, 1986

Printed for the use of the
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S311-30

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ADDITIONS TO THE BIG CYPRESS NATIONAL PRESERVE: ESTABLISHING THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA; DESIGNATING THE HORSEPASTURE RIVER AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM; AND AMENDING FLPMA

TUESDAY, SEPTEMBER 23, 1986

U.S. SENATE, SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES,

Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD–358, Dirksen Senate Office Building, Hon. Malcolm Wallop presiding.

Present: Senator Wallop.

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. Good morning, ladies and gentlemen. This morning the Subcommittee on Public Lands, Reserved Water and Resource Conservation will hear testimony on the following measures:

S. 2029 and H.R. 4090, to establish the Big Cypress National Preserve Addition in the State of Florida, and for other purposes;

S. 2442 and H.R. 4811, to establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes, whatever they may be;

S. 2707 and H.R. 2826, to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System; and

H.R. 2921, to authorize the Secretary of Agriculture to issue permanent easements for water conveyance systems in order to resolve title claims arising under Acts repealed by the Federal Land Policy and Management Act of 1976, and for other purposes.

I will place a copy of each of these measures in the hearing record.

[The text of the bills follow:]

99TH CONGRESS
2D SESSION

S. 2029

To establish the Big Cypress National Preserve Addition in the State of Florida, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30 (legislative day, JANUARY 27), 1986

Mr. CHILES introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To establish the Big Cypress National Preserve Addition in the State of Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Big Cypress National Preserve Addition Act".

(b) AMENDMENT OF BIG CYPRESS NATIONAL PRESERVE ACT.—Whenever in this Act an amendment is expressed in terms of an amendment to the Act of October 11, 1974, such amendment shall be considered to be made to the Act entitled "An Act to establish the Big Cypress National

Preserve in the State of Florida, and for other purposes", approved October 11, 1974 (Public Law 93-440; 88 Stat. 1257).

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the planned construction of Interstate 75 is presently being designed in such a way as to improve the natural water flow to the Everglades National Park, which has been disrupted by State Road 84 (commonly known as "Alligator Alley");

(2) the planned construction of Interstate 75 provides an opportunity to enhance protection of the Everglades National Park, to promote protection of the endangered Florida panther, and to provide for public recreational use and enjoyment of public lands by expanding the Big Cypress National Preserve to include those lands adjacent to Interstate 75 in Collier County north and east of the Big Cypress National Preserve, west of the Broward County line, and south of the Hendry County line;

(3) the Federal acquisition of lands bordering the Big Cypress National Preserve in conjunction with the construction of Interstate 75 would provide significant public benefits by limiting development pressure on lands which are important both in terms of fish and

wildlife habitat supporting endangered species and of wetlands which are the headwaters of the Big Cypress National Preserve; and

(4) public ownership of lands adjacent to the Big Cypress National Preserve would enhance the protection of the Everglades National Park while providing recreational opportunities and other public uses currently offered by the Big Cypress National Preserve.

(b) PURPOSE.—It is the purpose of this Act to establish the Big Cypress National Preserve Addition.

SEC. 3. ESTABLISHMENT OF ADDITION.

The Act of October 11, 1974, is amended by adding at the end thereof the following new section:

"SEC. 9. (a) In order to—

"(1) achieve the purposes of the first section of this Act;

"(2) complete the preserve in conjunction with the planned construction of Interstate Highway 75; and

"(3) insure appropriately managed use and access to the Big Cypress Watershed in the State of Florida, the Big Cypress National Preserve Addition is established.

"(b) The Big Cypress National Preserve Addition (referred to in this Act as the 'Addition') shall comprise approximately 128,000 acres as generally depicted on the map entitled 'Big Cypress National Preserve Addition', dated Janu-

ary, 1986, which shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior, Washington, D.C., and shall be filed with appropriate offices of Collier County in the State of Florida. The Secretary shall, as soon as practicable, publish a detailed description of the boundaries of the Addition in the Federal Register.

"(c) The area within the boundaries depicted on the map referred to in subsection (b) shall be known as the Big Cypress National Preserve Addition.".

SEC. 4. ADMINISTRATION OF ADDITION.

(a) UNIT OF THE NATIONAL PARK SYSTEM.—The Act of October 11, 1974, is amended by adding at the end thereof the following new section:

"SEC. 10. (a) The Secretary shall administer the Addition in accordance with this Act and the provisions of law generally applicable to units of the national park system, including the Act entitled 'An Act to establish a National Park Service, and for other purposes', approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1–4).

"(b) In administering the Addition, the Secretary shall develop and publish in the Federal Register such rules and regulations as the Secretary deems necessary and appropriate to manage and control the use of Federal lands and waters with respect to—

"(1) motorized vehicles;

"(2) exploration for and extraction of oil, gas, and other minerals;

"(3) grazing and agriculture;

"(4) draining or constructing of works or structures which alter the natural water courses;

"(5) recreational uses, including hunting, fishing. and trapping, which shall be promoted and encouraged;

"(6) new construction of any kind; and

"(7) such other uses as the Secretary determines must be limited or controlled in order to carry out the purposes of this Act.

"(c) For purposes of administering the Addition and notwithstanding section 2(c), it is the express intent of the Congress that the Secretary should substantially complete the land acquisition program contemplated with respect to the Addition in not more than five years after the date of the enactment of this paragraph.".

(b) HUNTING, FISHING, AND TRAPPING.—Section 5 of the Act of October 11, 1974, is amended by inserting "and the Addition" after "preserve" each place it appears.

(c) SUITABILITY AS WILDERNESS.—Section 7 of the Act of October 11, 1974, is amended—

(1) by inserting "with respect to the preserve and five years from the date of the enactment of the Big

Cypress National Preserve Addition Act with respect to the Addition" after "date of the enactment of this Act" in the first sentence; and

(2) by inserting "or the area within the Addition (as the case may be)" after "preserve" each place it appears.

SEC. 5. ACQUISITION OF LAND WITHIN ADDITION.

(a) UNITED STATES SHARE OF ACQUISITION COSTS.—The first section of the Act of October 11, 1974, is amended by adding at the end thereof the following new subsection:

"(d)(1) The aggregate cost to the United States of acquiring lands within the Addition may not exceed 80 percent of the total cost of such lands.

"(2) Except as provided in paragraph (3), if the State of Florida transfers to the Secretary lands within the Addition, the Secretary shall pay to or reimburse the State of Florida (out of funds appropriated for such purpose) an amount equal to 80 percent of the total costs to the State of Florida of acquiring such lands.

"(3) The amount described in paragraph (1) shall be reduced by an amount equal to 20 percent of the amount of the total cost incurred by the Secretary in acquiring lands in the Addition other than from the State of Florida.

"(4) For purposes of this subsection, the term 'total cost' means that amount of the total acquisition costs (including the value of exchanged or donated lands) less the amount of the costs incurred by the Federal Highway Administration and the Florida Department of Transportation, including severance damages paid to private property owners as a result of the construction of Interstate 75.".

(b) METHODS OF LAND ACQUISITION IN THE ADDITION.—The first sentence of subsection (c) of the first section of the Act of October 11, 1974, is amended—

(1) by inserting "or the Addition" after "preserve" the first place it appears; and

(2) in the first proviso—

(A) by inserting "in the preserve" after "subdivisions,"; and

(B) by striking out the colon and inserting in lieu thereof "and, any land acquired by the State of Florida, or any of its subdivisions, in the Addition shall be acquired in accordance with subsection (d):".

(c) VALUATION AND APPRAISAL.—The fourth sentence of subsection (c) of such section is amended by inserting "or the Addition" after "preserve" each place it appears.

(d) ACQUISITION OF PROPERTY RIGHTS BY THE STATE OF FLORIDA.—Subsection (c) of such section is

amended by adding at the end thereof the following: "Nothing in this Act shall be construed to interfere with the right of the State of Florida to acquire such property rights as may be necessary for Interstate 75.".

(e) EXCLUSION OF SUBSURFACE ESTATE.—The third sentence of subsection (c) of such section is amended by inserting "and the Addition" after "preserve" each place it appears.

(f) IMPROVED PROPERTY IN ADDITION.—Section 3(b) of the Act of October 11, 1974, is amended—

(1) in paragraph (i) by inserting "with respect to the preserve and January 1, 1986, with respect to the Addition" after "November 23, 1971,"; and

(2) in paragraph (ii)—

(A) by inserting "with respect to the preserve and January 1, 1986, with respect to the Addition" after "November 23, 1971," the first place it appears; and

(B) by inserting "or January 1, 1986, as the case may be," after "November 23, 1971," the second and third places it appears.

SEC. 6. COOPERATION AMONG AGENCIES.

The Act of October 11, 1974, is further amended by adding at the end thereof the following new section:

"SEC. 11. The Secretary and other involved Federal agencies shall cooperate with the State of Florida to establish recreational and oil, gas, and mineral access points and roads, rest and recreation areas, appropriate wildlife protection, and, where appropriate, hunting, fishing, frogging, and other recreational opportunities in conjunction with the creation of the Addition and in the construction of Interstate Highway 75.".

SEC. 7. REPORT TO CONGRESS.

The Act of October 11, 1974, is further amended by adding at the end thereof the following new section:

"SEC. 12. Not later than one year after the date of the enactment of this section, the Secretary shall submit to the Congress a detailed report on, and further plan for, the preserve and Addition including—

"(1) the status of the existing preserve, the effectiveness of past regulation and management of the preserve, and recommendations for future management of the preserve and the Addition;

"(2) a summary of the public's use of the preserve and the status of all access rights for public and private use;

"(3) the need for involvement of other State and Federal agencies in the management and expansion of the preserve and Addition;

"(4) the status of land acquisition; and

"(5) a determination, made in conjunction with the State of Florida, of the adequacy of the number, location, and design of the recreational access points on I-75/Alligator Alley for access to the Big Cypress National Preserve, including the Addition.

The determination required by clause (5) shall incorporate the results of any related studies of the State of Florida Department of Transportation and other Florida State agencies. Any recommendation for significant changes in the approved recreational access points, including any proposed additions, shall be accompanied by an assessment of the environmental impact of such changes.".

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

Section 8 of the Act of October 11, 1974, is amended—

(1) by striking out "There" in the first sentence and inserting in lieu thereof "(a) Except as provided in subsection (b), there"; and

(2) by adding at the end thereof the following new subsection:

"(b) There are authorized to be appropriated such sums as may be necessary to acquire lands within the Addition.".

99TH CONGRESS
2D SESSION

H. R. 4090

IN THE SENATE OF THE UNITED STATES

JULY 30 (legislative day, JULY 28), 1986
Received, read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To establish the Big Cypress National Preserve Addition in the State of Florida, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Big Cypress National Preserve Addition Act".

(b) AMENDMENT OF BIG CYPRESS NATIONAL PRESERVE ACT.—Whenever in this Act an amendment is expressed in terms of an amendment to the Act of October 11,

1974, such amendment shall be considered to be made to the Act entitled "An Act to establish the Big Cypress National Preserve in the State of Florida, and for other purposes", approved October 11, 1974 (88 Stat. 1258; 16 U.S.C. 698f and following).

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that:

(1) The planned construction of Interstate 75 is presently being designed in such a way as to improve the natural water flow to the Everglades National Park, which has been disrupted by State Road 84 (commonly known as "Alligator Alley").

(2) The planned construction of Interstate 75 provides an opportunity to enhance protection of the Everglades National Park, to promote protection of the endangered Florida panther, and to provide for public recreational use and enjoyment of public lands by expanding the Big Cypress National Preserve to include those lands adjacent to Interstate 75 in Collier County north and east of the Big Cypress National Preserve, west of the Broward County line, and south of the Hendry County line.

(3) The Federal acquisition of lands bordering the Big Cypress National Preserve in conjunction with the construction of Interstate 75 would provide significant

public benefits by limiting development pressure on lands which are important both in terms of fish and wildlife habitat supporting endangered species and of wetlands which are the headwaters of the Big Cypress National Preserve.

(4) Public ownership of lands adjacent to the Big Cypress National Preserve would enhance the protection of the Everglades National Park while providing recreational opportunities and other public uses currently offered by the Big Cypress National Preserve.

(b) PURPOSE.—It is the purpose of this Act to establish the Big Cypress National Preserve Addition.

SEC. 3. ESTABLISHMENT AND ADMINISTRATION OF ADDITION.

(a) ADDITION.—The Act of October 11, 1974, is amended by adding at the end thereof the following section:

"SEC. 9. BIG CYPRESS NATIONAL PRESERVE ADDITION.

"(a) ESTABLISHMENT.—In order to—

"(1) achieve the purposes of the first section of this Act;

"(2) complete the preserve in conjunction with the planned construction of Interstate Highway 75; and

"(3) insure appropriately managed use and access to the Big Cypress Watershed in the State of Florida, the Big Cypress National Preserve Addition is established.

"(b) MAP AND BOUNDARIES.—The Big Cypress National Preserve Addition (referred to in this Act as the 'Addition') shall comprise approximately 136,000 acres as generally depicted on the map entitled Big Cypress National Preserve Addition, dated June, 1986, and numbered 176–91000B, which shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior, Washington, D.C., and shall be filed with appropriate offices of Collier County in the State of Florida. The Secretary shall, as soon as practicable, publish a detailed description of the boundaries of the Addition in the Federal Register.

"(c) ADMINISTRATION.—The area within the boundaries depicted on the map referred to in subsection (b) shall be known as the Big Cypress National Preserve Addition and shall be managed in accordance with section 4.

"(d) COMPLETION OF ACQUISITION.—For purposes of administering the Addition and notwithstanding section 2(c), it is the express intent of the Congress that the Secretary should substantially complete the land acquisition program contemplated with respect to the Addition within 5 years after the enactment of this section.".

(b) HUNTING, FISHING, AND TRAPPING.—Section 5 of the Act of October 11, 1974, is amended by inserting "and the Addition" after "preserve" each place it appears.

(c) SUITABILITY AS WILDERNESS.—Section 7 of the Act of October 11, 1974, is amended—

(1) by inserting "with respect to the preserve and 5 years from the date of the enactment of the Big Cypress National Preserve Addition Act with respect to the Addition" after "date of the enactment of this Act" in the first sentence; and

(2) by inserting "or the area within the Addition (as the case may be)" after "preserve" each place it appears.

(d) INDIAN RIGHTS.—Section 6 of the Act of October 11, 1974, is amended as follows:

(1) In clause (i) insert "and the Addition" after "preserve" and insert "(January 1, 1985, in the case of the Addition)" after "1972".

(2) In clause (ii) insert "or within the Addition" after "preserve".

SEC. 4. ACQUISITION OF LAND WITHIN ADDITION.

(a) UNITED STATES SHARE OF ACQUISITON COSTS.—The first section of the Act of October 11, 1974, is amended by adding at the end thereof the following new subsection:

"(d)(1) The aggregate cost to the United States of acquiring lands within the Addition may not exceed 80 percent of the total cost of such lands.

"(2) Except as provided in paragraph (3), if the State of Florida transfers to the Secretary lands within the Addition, the Secretary shall pay to or reimburse the State of Florida (out of funds appropriated for such purpose) an amount equal to 80 percent of the total costs to the State of Florida of acquiring such lands.

"(3) The amount described in paragraph (2) shall be reduced by an amount equal to 20 percent of the amount of the total cost incurred by the Secretary in acquiring lands in the Addition other than from the State of Florida.

"(4) For the purposes of this subsection, the term 'total cost' means that amount of the total acquisition costs (including the value of exchanged or donated lands) less the amount of the costs incurred by the Federal Highway Administration and the Florida Department of Transportation, including severance damages paid to private property owners as a result of the construction of Interstate 75.".

(b) METHODS OF LAND ACQUISITION IN THE ADDITION.—The first sentence of subsection (c) of the first section of the Act of October 11, 1974, is amended—

(1) by inserting "or the Addition" after "preserve" the first place it appears; and

(2) in the first proviso—

(A) by inserting "in the preserve" after "subdivisions,"; and

(B) by striking out the colon and inserting in lieu thereof "and, any land acquired by the State of Florida, or any of its subdivisions, in the Addition shall be acquired in accordance with subsection (d):".

(c) VALUATION AND APPRAISAL.—The fourth sentence of subsection (c) of such section is amended by inserting "or the Addition" after "preserve" each place it appears.

(d) ACQUITION OF PROPERTY RIGHTS BY THE STATE OF FLORIDA.—Subsection (c) of such section is amended by adding at the end thereof the following: "Nothing in this Act shall be construed to interfere with the right of the State of Florida to acquire such property rights as may be necessary for Interstate 75.".

(e) EXCLUSION OF SUBSURFACE ESTATE.—The second and third sentences of subsection (c) of such section are each amended by inserting " and the Addition" after "preserve" each place it appears.

(f) IMPROVED PROPERTY IN ADDITION.—Section 3(B) of the Act of October 11, 1974, is amended

(1) in paragraph (i) by inserting "with respect to the preserve and January 1, 1986, with respect to the Addition" after "November 23, 1971,"; and

(2) in paragraph (ii)—

(A) by inserting "with respect to the preserve and January 1, 1986, with respect to the Addition" after "November 23, 1971," the first place it appears; and

(B) by inserting "or January 1, 1986, as the case may be," after "November 23, 1971" the second and third places it appears.

SEC. 5. COOPERATION AMONG AGENCIES.

The Act of October 11, 1974, is further amended by adding at the end thereof the following new section:

"SEC. 10. COOPERATION AMONG AGENCIES.

"The Secretary and other involved Federal agencies shall cooperate with the State of Florida to establish recreational access points and roads, rest and recreation areas, appropriate wildlife protection, and, where appropriate, hunting, fishing, frogging, and other recreational opportunities in conjunction with the creation of the Addition and in the construction of Interstate Highway 75. Not more than 3 of such access points shall be located within the preserve (including the Addition).".

SEC. 6. REPORT TO CONGRESS.

The Act of October 11, 1974, is further amended by adding at the end thereof the following new section:

"SEC. 11. REPORT TO CONGRESS.

"Not later than 3 years after the enactment of this section, the Secretary shall submit to the Congress a detailed report on, and further plan for, the preserve and Addition. The report and further plan shall include each of the following:

"(1) The status of the existing preserve, the effectiveness of past regulation and management of the preserve, and recommendations for future management of the preserve and the Addition.

"(2) The need for involvement of other Federal and State agencies to accomplish the objectives of the preserve and Addition.

"(3) The status of land acquisition.

"(4) A determination, made in conjunction with the State of Florida, of the adequacy of the number, location, and design of the recreational access points on Interstate 75 (Alligator Alley) for access to the Big Cypress National Preserve, including the Addition.

The determination referred to in paragraph (4) shall incorporate the results of any related studies of the State of Florida Department of Transportation and other Florida State agencies. Any recommendation for significant changes in the approved recreational access points, including any proposed additions, shall be accompanied by an assessment of the environmental impact of such changes.".

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

Section 8 of the Act of October 11, 1974, is amended—

(1) by striking out "There" in the first sentence and inserting in lieu thereof "(a) IN GENERAL.—Except as provided in subsection (b), there"; and

(2) by adding at the end thereof the following new subsection:

"(b) ADDITION.—There are authorized to be appropriated such sums as may be necessary for acquisition of lands and for development within the Addition.".

Passed the House of Representatives July 28, 1986.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

99TH CONGRESS
2D SESSION

S. 2442

To establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13 (legislative day, MAY 12), 1986

Mr. DECONCINI (for himself and Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF CONSERVATION AREA.

(a) ESTABLISHMENT.—(1) There is hereby established the San Pedro Riparian National Conservation Area (in this Act referred to as the "conservation area").

(2) The conservation area shall—

(A) consist of Federal lands acquired by exchange or purchase; and

(B) be managed by the Secretary of the Interior, acting through the Bureau of Land Management, (in this Act referred to as the "Secretary") in accordance with the provisions of this Act.

(3) The conservation area shall not cover more than 60,000 acres.

(b) BOUNDARIES.—Lands to be included in the conservation area are generally depicted on a map entitled "Boundary Map, San Pedro Riparian National Conservation Area", and 51 Fed. Reg. 8715, which together with a legal description, ref. A21410, shall be on file and available for public inspection in the offices of the Secretary of the Interior, Washington, D.C., and in appropriate State and local offices of the Bureau of Land Management in the State of Arizona. The Secretary shall finalize the boundaries of the conservation area no later than 5 years after the date of enactment of this Act.

SEC. 2. MANAGEMENT OF CONSERVATION AREA.

(a) MANAGEMENT.—The Secretary shall manage the conservation area—

(1) in accordance with the provisions of this Act, and where not inconsistent with the provisions of this Act, the principles of the Federal Land Policy and

Management Act of 1976 (43 U.S.C., 1701 et. seq.); and

(2) in a manner that conserves, protects, and enhances the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreation resources of the conservation area.

(b) OTHER USES.—The Secretary may allow uses other than those specified in subsection (a) if he can show that such uses will have no significant adverse effects on the primary purposes for which the conservation area is established.

(c) NO DISPOSITION OF LANDS WITHIN CONSERVATION AREA.—Notwithstanding any other provision of law, lands within the conservation area shall not be available for disposition, except through exchange to improve boundaries.

SEC. 3. MANAGEMENT PLAN.

(a) DEVELOPMENT OF PLAN.—No later than two years after the date of enactment of this Act, the Secretary shall develop a plan for the comprehensive and long-term management, development, and protection of the conservation area. The plan shall be developed with full opportunity for public participation and comment, and shall contain provisions designed to assure protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, and recreation resources and values of the conservation area.

(b) USE OF CONSERVATION AREA.—The plan developed pursuant to subsection (a) shall generally provide for visitor use of the conservation area. Notwithstanding the preceding sentence, the Secretary may limit visitor use, close portions of the conservation area to public use, or allow use of the conservation area by permit only (to be issued by him with appropriate conditions) in order to insure protection of the conservation area's resources and values as provided in this Act.

(c) RESEARCH IN CONSERVATION AREA.—In order to assist in the development of appropriate management strategies for the conservation area, the Secretary may authorize research on matters including the environmental, biological, hydrological, and cultural resources in the conservation area.

(d) PRIVATE MANAGEMENT.—The Secretary may enter into cooperative agreements with appropriate State and local agencies or private organizations for the management of any portion of the conservation area in accordance with land use plans for the conservation area developed pursuant to the provisions of this Act.

SEC. 4. MULTIPLE USE ADVISORY COUNCIL.

The Secretary of the Interior shall establish a Multiple Use Advisory Council which shall advise and recommend to the Secretary appropriate management practices to implement the provisions of the land use plan and the purposes of

this Act. The members of the council shall be appointed by the Secretary and shall include representatives from Cochise County.

SEC. 5. GENERAL PROVISIONS.

(a) WITHDRAW FROM MINING.—Subject to valid existing rights, the lands described in section 1 are hereby withdrawn from all forms of appropriation under the public land laws, including mining and mineral leasing laws and the Geothermal Leasing Act.

(b) REGULATIONS.—The Secretary is authorized to issue regulations necessary to implement the provisions of this Act.

(c) VIOLATIONS OF ACT.—Any person who violates any provision of this Act or other regulations issued by the Secretary to implement this Act shall be subject to a fine of up to $10,000, or to imprisonment for up to one year, or both.

(d) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate State and local agencies for enforcement of the provisions of this Act and regulations issued pursuant to it.

(e) ENDANGERED SPECIES ACT.—Nothing in this Act shall supersede or otherwise affect the Endangered Species Act of 1973 (16 U.S.C. 1530 et seq.).

(f) ACQUISITION OF LANDS.—Nothing in this Act shall affect State or private inholdings within the boundaries of the conservation area as described by the Secretary except as they may be acquired by exchange or purchase but not by condemnation.

SEC. 6. REPORT TO CONGRESS.

No later than 5 years after the date of enactment of this Act and every 10 years thereafter, the Secretary shall furnish to the appropriate committees of the House of Representatives and the Senate, a report on the implementation of this Act. Such report shall include a detailed statement on the condition of the resources within the conservation area and the Bureau of Land Management's ability to achieve the management goals specified under this Act.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

99TH CONGRESS
2D SESSION

H. R. 4811

IN THE SENATE OF THE UNITED STATES

AUGUST 12 (legislative day, AUGUST 11), 1986
Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT OF SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT.—In order to protect the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the public lands surrounding the San Pedro River in Cochise

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County, Arizona, there is hereby established the San Pedro Riparian National Conservation Area (hereafter in this Act referred to as the "conservation area").

(b) AREA INCLUDED.—The conservation area shall consist of public lands as generally depicted on a map entitled "San Pedro Riparian National Conservation Area—Proposed" dated July 1986, comprising approximately 43,000 acres.

(c) MAP.—As soon as is practicable after enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Each such map shall have the same force and effect as if included in this Act. Such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the Bureau of Land Management offices of the State Director for Arizona, and the district office responsible for the management of the conservation area.

SEC. 2. MANAGEMENT OF CONSERVATION AREA.

(a) GENERAL AUTHORITIES.—The Secretary shall manage the conservation area in a manner that conserves,

protects, and enhances the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area. Such management shall be guided by this Act and, where not inconsistent with this Act, by the provisions of the Federal Land Policy and Management Act of 1976 (hereinafter in this Act referred to as "FLPMA").

(b) USES.—The Secretary shall only allow such uses of the conservation area as he finds will further the primary purposes for which the conservation area is established. Except where needed for administrative or emergency purposes, the use of motorized vehicles in the conservation area shall only be allowed on roads specifically designated for such use as part of the management plan prepared pursuant to section 3 of this Act. The Secretary shall have the power to implement such reasonable limits to visitation and use of the conservation area as he finds appropriate for the protection of the resources of the conservation area, including requiring permits for public use, or closing portions of the conservation area to public use.

(c) LIVESTOCK.—In order to provide an opportunity for the study, evaluation, and monitoring of riparian areas in the absence of livestock grazing, the Secretary shall not, subject to valid existing contractual rights, issue any permit for the grazing of livestock on lands designated as part of the conser-

vation area by this Act for a period of 15 years from the date of enactment of this Act.

(d) WITHDRAWALS.—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto.

(e) ENFORCEMENT.—Any person who violates any provision of this Act or any regulation promulgated by the Secretary to implement this Act shall be subject to a fine of up to $10,000, or imprisonment for up to one year, or both.

SEC. 3. MANAGEMENT PLAN.

(a) DEVELOPMENT OF PLAN.—No later than 2 years after the enactment of this Act, the Secretary shall develop a comprehensive plan for the long-range management and protection of the conservation area. The plan shall be developed with full opportunity for public participation and comment, and shall contain provisions designed to assure protection of the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreation resources and values of the conservation area.

(b) RECOMMENDATIONS.—The Secretary shall, in the comprehensive plan referred to in subsection (a), develop rec-

ommendations to Congress on whether additional lands should be included in the conservation area.

(c) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with appropriate State and local agencies, pursuant to section 307(b) of FLPMA, to better implement the plan developed pursuant to subsection (a).

(d) RESEARCH.—In order to assist in the development of appropriate management strategies for the conservation area, the Secretary may authorize research on matters including the environmental, biological, hydrological, and cultural resources of the conservation area, pursuant to section 307(a) of FLPMA.

SEC. 4. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary shall establish a San Pedro Riparian National Conservation Area Advisory Committee, whose purpose shall be to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required pursuant to section 3 of this Act.

(b) REPRESENTATION.—There shall be 7 members of the Committee, who shall be appointed by the Secretary. Members of the Committee shall be appointed for terms of three years, except that of the members first appointed 2 shall be appointed for terms of 1 year and 3 shall be appoint-

ed for terms of 2 years. The Secretary shall appoint one member from nominations supplied by the Governor of the State of Arizona, and one member from nominations supplied by the Supervisors of Cochise County, Arizona. The other members shall be persons with recognized backgrounds in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the primary purposes for which the conservation area was created.

SEC. 5. LAND ACQUISITION.

The Secretary may acquire lands or interests in lands within the boundaries of the conservation area by exchange, purchase, or donation, except that any lands or interests therein owned by the State or local government may be acquired by donation or exchange only. Any purchase or exchange of lands to be added to the conservation area shall require the consent of the owner of those lands or rights.

SEC. 6. REPORT TO CONGRESS.

No later than five years after the enactment of this Act, and every ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, on the implementation of this Act. Such report shall include a detailed statement on the condition of the resources within the

conservation area and of the progress of the Bureau of Land Management in achieving the purposes of this Act.

SEC. 7. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Passed the House of Representatives August 11, 1986.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

99TH CONGRESS
2D SESSION

S. 2707

To amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 28), 1986

Mr. BROYHILL introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF HORSEPASTURE RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by redesignating the paragraphs relating to the Au Sable River, the Tuolumne River, the Illinois River, and the Owyhee River as paragraphs (52)

through (55) and by inserting the following new paragraph after paragraph (55) as so redesignated.

(56) HORSEPASTURE, NORTH CAROLINA.—The segment from Bohaynee Road (N.C. 281) downstream approximately 4.25 miles to where the segment ends at Lake Jocassee, to be administered by the Secretary of Agriculture. Notwithstanding any limitation of section 6 of this Act, the Secretary is authorized to utilize the authority of this Act and those pertaining to the National Forests to acquire by purchase with donated or appropriated funds, donation, exchange or otherwise, such non-Federal lands or interests in lands within, near, or adjacent to the designated segments of the river which the Secretary determines will protect or enhance the scenic and natural values of the river.

99TH CONGRESS
2D SESSION

H. R. 2826

IN THE SENATE OF THE UNITED STATES

JULY 30 (legislative day, JULY 28), 1986
Received, read twice and referred to the Committe on Energy and Natural Resources

AN ACT

To amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF HORSEPASTURE RIVER.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by redesignating the paragraphs relating to the Au Sable River, the Tuolumne River, the Illinois River, and the Owyhee River as paragraphs (52) through (55) and by inserting the following new paragraph after paragraph (55) as so redesignated:

(56) HORSEPASTURE, NORTH CAROLINA.—The segment from Bohaynee Road (N.C. 281) downstream approximately 4.25 miles to where the segment ends at Lake Jocassee, to be administered by the Secretary of Agriculture. Notwithstanding any limitation of section 6 of this Act, the Secretary is authorized to utilize the authority of this Act and those pertaining to the National Forests to acquire by purchase with donated or appropriated funds, donation, exchange or otherwise, such non-Federal lands or interests in lands within, near, or adjacent to the designated segments of the river which the Secretary determines will protect or enhance the scenic and natural values of the river.

Passed the House of Representatives July 28, 1986.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

99TH CONGRESS
2D SESSION

H. R. 2921

IN THE SENATE OF THE UNITED STATES

MAY 8 (legislative day, MAY 5), 1986
Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To authorize the Secretary of Agriculture to issue permanent easements for water conveyance systems in order to resolve title claims arising under Acts repealed by the Federal Land Policy and Management Act of 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) For purposes of this Act, the term "the Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761).

(b) Section 501 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1) Upon receipt of a written application pursuant to paragraph (2) of this subsection from an applicant meeting the requirements of this subsection, the Secretary of Agriculture shall issue a permanent easement, without a requirement for reimbursement, for a water system as described in subsection (a)(1) of this section, traversing Federal lands within the National Forest System ('National Forest Lands'), constructed and in operation or placed into operation prior to October 21, 1976, if—

"(A) the traversed National Forest lands are in a State where the appropriation doctrine governs the ownership of water rights;

"(B) at the time of submission of the application the water system is used solely for agricultural irrigation or livestock watering purposes;

"(C) the use served by the water system is not located solely on Federal lands;

"(D) the originally constructed facilities comprising such system have been in substantially continuous operation without abandonment;

"(E) the applicant has a valid existing right, established under applicable State law, for water to be conveyed by the water system;

"(F) a recordable survey and other information concerning the location and characteristics of the system as necessary for proper management of National Forest lands is provided to the Secretary of Agriculture by the applicant for the easement; and

"(G) the applicant submits such application on or before December 31, 1996.

"(2)(A) Nothing in this subsection shall be construed as affecting any grants made by any previous Act. To the extent any such previous grant of right-of-way is a valid existing right, it shall remain in full force and effect unless an owner thereof notifies the Secretary of Agriculture that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and submits a written application for issuance of an easement pursuant to this subsection, in which case upon the issuance of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.

"(B) Easements issued under the authority of this subsection shall be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulations at the time of transfer. The holder shall notify the Secretary of Agriculture within sixty days of any address change of the holder or change in ownership of the facilities.

"(C) Easements issued under the authority of this subsection shall include all changes or modifications to the original facilities in existence as of October 21, 1976, the date of enactment of this Act.

"(D) Any future extension or enlargement of facilities after October 21, 1976, shall require the issuance of a separate authorization, not authorized under this subsection.

"(3)(A) Except as otherwise provided in this subsection, the Secretary of Agriculture may terminate or suspend an easement issued pursuant to this subsection in accordance with the procedural and other provisions of section 506 of this Act. An easement issued pursuant to this subsection shall terminate if the water system for which such easement was issued is used for any purpose other than agricultural irrigation or livestock watering use. For purposes of subparagraph (D) of paragraph (1) of this subsection, non-use of a water system for agricultural irrigation or livestock watering purposes for any continuous five-year period shall constitute a rebuttable presumption of abandonment of the facilities comprising such system.

"(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary of Agriculture any power or authority to regulate or

control in any manner the appropriation, diversion, or use of water for any purpose (nor to diminish any such power or authority of such Secretary under applicable law) or to require the conveyance or transfer to the United States of any right or claim to the appropriation, diversion, or use of water.

"(C) Except as otherwise provided in this subsection, all rights-of-way issued pursuant to this subsection are subject to all conditions and requirements of this Act.

"(D) In the event a right-of-way issued pursuant to this subsection is allowed to deteriorate to the point of threatening persons or property and the holder of the right-of-way, after consultation with the Secretary of Agriculture, refuses to perform the repair and maintenance necessary to remove the threat to persons or property, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and to assess the holder for the costs of such repair and maintenance, regardless of whether the Secretary had required the holder to furnish a bond or other security pursuant to subsection (i) of this section.".

(c) Section 501 of the Act is amended by adding at the end of subsection (b) the following paragraph:

"(3) The Secretary of Agriculture shall have the authority to administer all rights-of-way granted or issued under authority of previous Acts with respect to lands under the jurisdiction of the Secretary of Agricul-

ture, including rights-of-way granted or issued pursuant to authority given to the Secretary of the Interior by such previous Acts.".

SEC. 2. Section 504 of the Act is amended by—

(1) inserting before the end of subsection (f) "or for emergency repair work necessary for those rights-of-way authorized under section 501(c) of this Act."; and

(2) striking out the first sentence of subsection (g) and by inserting in lieu thereof the following: "The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative

cost share program between the United States and the holder.".

Passed the House of Representatives May 7, 1986.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

Senator WALLOP. The hearing record will remain open for one week after today, during which time written testimony on any of these measures can be submitted to the Subcommittee.

In the interests of time, I am going to ask witnesses to limit their oral statements to three minutes. Their full statement will be in the record. I do this because some people have traveled a good long ways, and it is important that they be allowed to have their testimony heard even if they speak during the closing minutes.

If you would be kind enough to keep your eye on the lighted timer, when you see the yellow light come on there will be one minute remaining to speak. Please make your concluding remarks at that time, and when the red light comes on, finish that thought and stop. Additional written comments may be provided, and the entire testimony oral and written will be included in the record.

The first witness we have this morning is my colleague Lawton Chiles, Senator from Florida.

STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator CHILES. Thank you very much, Mr. Chairman.

I am very pleased to appear before the Subcommittee this morning with my colleague, Congressman Tom Lewis from the House, who has steered the similar legislation that we are talking about today in the Senate Bill through the House committee and has done an outstanding job in sponsoring and pushing this legislation. I am delighted to stand with him on that.

I appreciate your willingness to address legislation that we have introduced to expand the Big Cypress National Preserve in south Florida. This is a unique proposal. It calls for using highway severance funds already authorized for the I–75 construction to accomplish the equally important goals of environmental restoration and wildlife protection.

The entire Florida Congressional Delegation supports S. 2029. It enjoys wide support through the State of Florida. The House has already acted favorably on a similar measure, and I hope the hearing this morning will lead to prompt, positive action by this Committee and the full Senate as well.

In the interests of time, I would like to brief my statement and ask that the full statement be presented in the record as if given.

Senator WALLOP. By all means.

Senator CHILES. And to briefly explain the timeliness of this bill. What we want to do in this bill is to purchase additional lands for the Big Cypress Preserve in conjunction with the planned construction of Interstate 75 in that region. The construction of the Interstate is going to sever access to private property north and south of the highway, requiring the payment of $45 million in severance damages by the Department of Transportation.

By using the Department of Transportation funds we can cover half the value, almost half the value of the 128,000 acre addition. The legislation sets up a framework for the Department of Interior to join with the State of Florida in purchasing the remainder.

The House has completed action on the bill. The Florida Department of Transportation will soon begin making offers of severance damages to landowners, so it is very important that the Senate act now to take advantage of the already allocated Federal dollars.

Mr. Chairman, I believe it is very important we move these sensitive lands into public ownership. Florida is one of the most rapidly growing States. We have to take deliberate steps to preserve these resources. Public ownership will accomplish several goals.

The first will be expanding watershed protection for the Everglades National Park. Right now, Alligator Alley, the cross-state highway going from Andytown in Broward County to Naples, is disrupting the natural water flow through the Everglades. The park's livelihood is dependent on the quality and quantity of water that flows into it. The careful construction of I-75 along Alligator Alley provides the opportunity to correct this hydrological problem.

Second, S. 2029 will also assist efforts currently underway to protect the habitat of the Florida panther and other endangered species. All known Florida panthers in existence live in this region. Panther fatalities are occurring as a result of automobile traffic on Alligator Alley. The design of I-75 provides for wildlife crossings to allow panthers and other species to pass safely under the Interstate.

Also, Mr. Chairman, this legislation will increase recreational opportunity for the general public in this beautiful area. S. 2029 includes language to promote and encourage the multiple-use character of the addition. Let me say, Mr. Chairman, that I hope that his Subcommittee will take note of the three differences between this bill and the House version. I hope the Subcommittee will approve the 10,000 acre environmentally sensitive Fakahatchee Strand which the House added to their measure.

Secondly, the House provided an amendment to ensure that protection afforded the Mikasuki Indians in the original preserve also will be upheld in the addition.

And finally, Mr. Chairman, I would like to see the Subcommittee adopt the language from the House regarding recreational access.

Mr. Chairman, I wish to submit for the record testimony from the Honorable Bob Graham, the Governor of Florida.

I appreciate having the opportunity to discuss this bill before the Subcommittee. As you are well aware, little time is left in the 99th Congress.

It is our strong desire to see this legislation pass this session, and I hope that I can count on you and other members of the Subcommittee to act in what has to be a most timely fashion in S. 2029.

I appreciate the time that my colleagues have taken from their busy schedules to speak on behalf of S. 2029. Thank you again for the opportunity. We are delighted to have Nat Reed, former Assistant Secretary for the Department of Interior here also speaking in favor of this bill, and many representatives from National Audubon and other people that feel this is so strongly to the benefit of protecting the Park and providing this access land for people to use in the State of Florida.

Thank you so much, Mr. Chairman.

[The prepared statements of Senator Chiles and Governor Graham follow:]

SENATOR LAWTON CHILES
SEPTEMBER 23, 1986
SENATE SUBCOMMITTEE ON PUBLIC LANDS
S. 2029, BIG CYPRESS EXPANSION LEGISLATION

I am pleased to appear today before this Committee in support of legislation to expand the Big Cypress National Preserve in south Florida. The bill before you, S. 2090, is a companion bill to legislation already passed by the House, H.R. 4090. This proposal, calling for putting into public ownership some 128,000 acres bordering the northeast boundary of the existing Preserve, is supported by the entire Florida Congressional Delegation and enjoys wide support throughout the State of Florida. I hope the hearing this morning will lead to positive action by this Committee and the full Senate as well.

Undertaking an ambitious parkland acquisition project in this era of tight budgets and limited Federal dollars understandably raises some questions. I am an advocate of spending restraint and believe in this time of Federal deficits we must work diligently to find creative ways of meeting important national goals and direct limited Federal dollars to areas of high priority. The acquisition program contemplated in this legislation represents an innovative approach to achieving equally important multiple objectives.

Lands purchased for inclusion in the Big Cypress National Preserve would be in conjunction with the planned construction of Interstate 75, providing an important opportunity to utilize Federal dollars already allocated for the construction of an Interstate Highway to accomplish environmental restoration and endangered species protection. Additionally, if the Department of the Interior were able to work out land exchanges with affected property owners, then Federal expenditures for this project could be significantly reduced.

Today I want, first, to outline reasons why these particular lands should be in Federal ownership. Then, I want to explain why we should move on this land acquisition program as soon as possible. And, finally, I want to make a few comments on the management of the Big Cypress.

WHY FEDERAL OWNERSHIP IS JUSTIFIED

Acquiring these particular lands will enhance ongoing activities aimed at protecting Everglades National Park and preserving the endangered Florida Panther.

As an original sponsor of the Federal legislation establishing the Big Cypress National Preserve, I am keenly aware of the critical role water quality and quantity plays in ensuring the livelihood of Everglades National Park. Though large in acreage, the 1,337,000 acre Everglades National Park is fragile and totally dependent on the complex hydrology of the entire region. Located at the end of a watershed, the Park's livelihood is dependent on the quality and quantity of water that flows into it. The 574,000 acre Big Cypress National Preserve was established by Congress in 1974 to make sure this important watershed area was not further developed or disrupted. Additionally, the purchase of this areas has provided significant recreational opportunities which will become increasingly important as South Florida continues to experience growth and development. To date nearly $180 million in Federal funds has been appropriated to purchase these important lands. This past year $21 million was made available to help complete the acquisition program.

Alligator Alley, the cross-state highway going from Andytown in Broward County to Naples, has disrupted the natural water flow in the Big Cypress Preserve area and has posed a major threat to Florida Panthers and other wildlife of the region. The road functions as a dam in some areas, causing unnatural pooling of water while at the same time interrupting the important sheet flow so essential to Everglades National Park. The construction of I-75 along Alligator Alley provides an important opportunity to correct these hydrological problems and, in fact, plans are underway to ensure that this is done. Public ownership of the lands bordering the I-75 corridor will expand the watershed protection offered to Everglades National Park, prevent future development of these lands, and increase recreational opportunities for the general public.

In addition, it is important to point out how public ownership of these identified lands will foster efforts currently underway to protect the habitat of the Florida panther and other endangered species. There are currently estimated to be 20-30 Florida Panthers in existence, making it among the most endangered species on Earth. All known Florida panthers in existences live in Everglades National Park, the Big Cypress National Preserve and Fakahatchee Strand. The U.S. Fish and Wildlife Service has proposed the establishment of a 32,000 acre National Wildlife Refuge in the Fakahatchee Strand area for the primary purpose of protecting the critical habitat of the panther, the state animal of Florida. As a member of the Senate Appropriations Committee, I have worked over the past few years to secure funding for this important land acquisition project. Congress provided $4 million in fiscal year 1985 and approved $3 million in the fiscal year 1986 bill.

The 128,000 acre area proposed for purchase under this bill contains land critical to the continuing survival of the endangered Florida panther. Panther fatalities have occurred as a result of automobile traffic on Alligator Alley. Provisions

for wildlife crossings in the design for I-75 to allow panthers and other species to cross under the interstate show the commitment of the State in the continued protection of endangered species. The State of Florida Department of Transportation supports the construction of 23 new wildlife crossings and 13 bridge extensions, estimated to cost $12.9 million. The State has agreed to finance that portion of the total cost which is determined to be nonparticipating by the Federal Highway Administration, approximately $10 million. Public acquisition and management of these lands by the National Park Service as envisioned in this bill will complement the efforts of the Fish and Wildlife Service National Wildlife Refuge and will ensure that everything possible is done to guarantee the protection of panther, and other endangered species habitat.

WHY TIMELY ACTION ON THIS PROGRAM IS NECESSARY

The conversion of Alligator Alley to I-75 will sever existing access to private property north and south of the highway, requiring the payment of damages to the property owners by the Department of Transportation. Estimates are that severance damage funds, which must in any event be expended, will equal 47 percent of the value of the affected lands. The proposed legislation contemplates using the severance damage monies to pay a portion of the cost of acquiring approximately 128,000 acres of privately owned land located immediately north of the existing Big Cypress National Preserve. The balance of the purchase price would be paid by the Department of the Interior and the State of Florida in the same cost-sharing arrangement (80/20) found in the original Big Cypress legislation. Significantly reduced Federal expenditures are possible if land exchanges with affected property owners can be accomplished by the Department of the Interior.

If we act quickly to enact this legislation enabling the utilization of the DOT severance damage funds, we will make it possible for the public to acquire these environmentally significant lands for substantially less cost than would otherwise be possible. It may be as early as this fall when Florida DOT will be able to begin to make offers of severance damages to landowners along I-75. The other matching funds as well as the necessary legislative authority need to be available to complete full acquisition of the lands. For this reason, it is critical we secure approval of legislation to enable the State Department of Transportation to work with DOI and the State of Florida to accomplish the acquisition of these lands in conjunction with purchasing right-of-ways and paying severance damages associated with the construction of I-75.

I do want to briefly mention the extent to which the State of Florida has demonstrated its commitment to a partnership with the Federal Government to achieve the goals I have outlined. As I mentioned previously,

the State is willing to go above and beyond its necessary role in financing the construction of I-75 to enhance environmental restoration and endangered species protection. The 1985 Florida Legislature enacted legislation designating the 128,000 acre area as an "area of critical State concern." This designation gives the State eminent domain power over this land and thus will facilitate the joint Federal-State acquisition program for this property. This designation will also help protect the area against development until acquisition is complete. Additionally, the State has committed some $22 million in State funds for land acquisition in the Everglades area. The actions by the State of Florida coupled with the accelerated schedule for the construction of this portion of I-75 point to the need for expedient and positive action by Congress to approve this land acquisition program. I hope the members of the Committee will join in this effort to protect and preserve the national treasures associated with Everglades National Park and Big Cypress National Preserve.

MANAGEMENT OF THESE LANDS

The legislation I have sponsored contemplates that the lands added to the existing Big Cypress National Preserve will be managed consistently with those within the already established boundaries. The legislation amends the original act, however, by including a mandate in Section 10(b) for the Park Service to promote and encourage recreational use. I appreciate having this opportunity to comment on the Park Service role in allowing and regulating various activities allowed for under the original Big Cypress National Preserve Act.

Those of us who worked to provide for the public ownership of the lands now included in Big Cypress did so with the understanding that the area would not be another National Park. Public ownership was shown to be necessary if we were to prevent further development of these lands which would, in turn, further disrupt the sheet flow of water that is so essential to the livelihood of Everglades National Park. The important investment of Everglades National Park needed further protection and, for this reason, we worked to purchase the Big Cypress to act as a buffer to the Park.

Recognizing the "recreational values of the Big Cypress Watershed", the Preserve concept was developed so as to permit the continuation of the traditional activities associated with this area -- activities which may have not been compatible with more stringent management requirements of a National Park. The Public Law establishing the Preserve charges the Park Service to provide for "the enhancement and public enjoyment thereof". While I did not envision that the allowable activities would be unregulated, I certainly did envision that these activities would be permitted and encouraged. My overriding concern, however, is that over the years the Park Service has moved toward employing

managing objectives for this area as if it were a Park as opposed to embracing a more flexible management structure as I believe was envisioned in the creation of the Preserve concept.

I understand and appreciate the difficulties in achieving a balance between providing for the public enjoyment of the recreational values of the Big Cypress and assuring the ecological integrity of the Preserve. While it is not an easy task, it is certainly one which was full contemplated when the Preserve was established. Resource problems other than the original hydrological concerns, such as the endangered Florida Panther, have surfaced since the creation of the Preserve which need attention and action on the part of the various affected agencies. Public use and enjoyment of the area should be controlled and regulated, but it should be allowed and encouraged. What I don't want to see is the resource problems being a means by which to reduce and/or eliminate the public use and enjoyment of areas where public funds have been used to acquire the land. I believe we can reach a balance and have expressed my concerns to the Regional Director of the National Park Service. I stand ready to work with this Committee as well as we strive to solve the diverse and complex problems associated with this unique area.

STATEMENT OF GOVERNOR BOB GRAHAM

ON BEHALF OF THE STATE OF FLORIDA

on

LEGISLATION TO EXPAND THE BIG CYPRESS NATIONAL PRESERVE

(S. 2029)

before the

SENATE ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON

PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

September 23, 1986

Washington, D.C.

GOOD MORNING . .

The actions you take today can save one of the most significant and endangered national resources on this continent. It is absolutely unique -- one of a kind. It is the key to the survival of countless endangered species -- plants and animals and reptiles -- all dependent on this one fragile linchpin for their own continued existence. It has come perilously close to dying in this century and it is gravely threatened today.

What we are proposing in S. 2029 is a simple question of life or death for an irreplaceable resource -- Everglades National Park.

I am writing to support and urge your approval of S. 2029 which authorizes the Department of Interior to participate with the State of Florida in the acquisition of a 128,000 acre addition to the Big Cypress National Preserve. I also urge you to amend the bill to match H.R. 4090 which was adopted by the U.S. House of Representatives on July 28, 1986.

Our goal in this effort is to create an envelope of protection around Everglades National Park.

If we fail to act, those 128,000 acres comprising the Big Cypress Addition will likely be developed into citrus groves and subdivisions. The resulting alterations in water flow and the degradation in water quality could be drastic. Plant and animal life could suffer immeasurable -- perhaps irreparable -- damage. Future water supplies for rapidly growing Southwest Florida would surely suffer.

One of the most important investments in our national parks system would be wasted.

Everglades National Park and the Big Cypress National Preserve which border it are places unlike any other. Through them flows most of Southwest Florida's fresh water. They are home to the rare and endangered species of plant and animal: the green and purple Dollar Orchid, the colorful tree snail, the Southern Bald Eagle and the vanishing Florida Panther.

Nowhere else in the world can you see crocodiles and sawgrass and manatees and mangroves and cypress knees and Whitetail Deer and Swamp Lillies and Indigo Snakes -- all coexisting in a delicate ecological balance.

A century ago we started to lose the Everglades when developers drained the swamps and the wetlands for housing projects and cattle and farm land. In those days we didn't understand the unique and irreplaceable nature of Florida's singular ecosystem.

It took time and education for Florida to realize that there was a "river of grass" and that the great flow of fresh water moving slowly southward from the Kissimmee Basin all the way to Florida Bay was essential to the survival of South Florida.

We now know that the fragile, complicated Everglades are the heart of Florida. The survival of Everglades National Park depends on water which flows across the land from the Big Cypress Swamp and the Everglades to the north of its boundaries. That is why the acquisition of sensitive lands adjacent to and buffering Everglades National Park and the Big Cypress National Preserve is crucial to the survival of those resources.

The water flow through the Big Cypress Preserve feeds Everglades National Park -- literally keeps it from drying up. The tract of land specified in this bill is the source of that water flow -- and is also an integral part of the habitat for the Florida Panther. There are probably only about 30 panthers left in the world -- all in South Florida.

We in Florida are most urgently aware of what is at stake in the preservation of the Everglades.

We've seen the graphic and terrible results of letting the Everglades dry out.

In the early 1970's and again in the early '80's -- during severe droughts -- half a million acres of hardwood and sawgrass went up in flames. The "river of grass" became a sheet of fire. The crisis forced strict water rationing in some of our major cities, from Palm Beach to Key West.

We cannot let that happen again -- and with the public acquisition and protection of the Everglades' water system -- with the creation of that "envelope of protection" around Everglades National Park -- it never will.

This envelope of protection is also of vital importance to the rapidly growing population of Southwest Florida. The Big Cypress Swamp is a source of water for the cities of Southwest Florida. In future decades it will be critical to the water supplies of a rapidly growing Gulf Coast.

In 1983 the State of Florida put together one of the most progressive and aggressive land acquisition programs ever seen in an effort to restore the health of the Everglades before it was too late.

Under the program we call Save Our Everglades we are attempting to turn back the clock. By the year 2,000 the Everglades will look and function more like it did in the year 1900 than it does today. The Save Our Everglades program is as much about undoing past mistakes as it is about future preservation.

Save Our Everglades has a comprehensive set of goals including:

-- the restoration of the natural meandering path of the channelized Kissimmee River -- headwaters for the great fresh water "river" spilling slowly down through the State and replenishing Everglades National Park.

-- the development of a comprehensive program to restore Lake Okeechobee and prevent its further pollution.

-- the reflooding of a 100 square-mile tract of drained land in Palm Beach County, restoring it to its natural Everglades condition.

-- the management of the deer population at a level that can survive seasonal extremes in water levels.

-- purchase of land in the East Everglades, Fakahatchee Strand and the Big Cypress to expand the protective envelope around the Park and to ensure safe habitat for the Florida Panther.

-- the inclusion of the hydrologic structures and animal crossing in the Interstate 75 conversion.

Ultimately the protected lands will total about 3,400,000 acres. Nearly 2,900,000 acres of that are under State/Federal ownership now. Florida has the largest program for public acquisition of environmentally sensitive lands in the nation.

The Big Cypress Addition is a minimal investment with maximum return -- the survival of Everglades National Park and the viability of the Everglades' system and a continued drinking water supply for Southwest Florida.

It is ironic that "visionary" public works projects to drain and develop the Everglades first endangered them -- and that today, a visionary public works project can help to save them.

The conversion of Alligator Alley to Interstate 75 will have hydrologic structures to permit the continuous flow of water southward. It will also have 36 panther and animal underpasses to allow safe movement under the road.

The severance damages required by the conversion place the acquisition of the surrounding land within reach. The opportunity exists to purchase these 128,000 acres for about half their appraised value. If we don't act now many of the property owners will convert these environmentally sensitive lands into citrus groves and subdivisions.

This is a rare windfall. We can acquire a key piece of the "envelope" in the heart of the buffer zone without paying a phenomenally high price for it.

It's easy to see the size of the existing Federal investment in Everglades National Park and the Big Cypress National Preserve if you look at the attached map of South Florida.

Everglades National Park and the Big Cypress National Preserve comprise 2,000,000 acres. The State of Florida donated the majority of the land for Everglades National Park when it was formed in 1947. Additionally, in 1973, we contributed $40 million for acquisition of the Big Cypress National Preserve. The State has since acquired over 940,000 acres to buffer and protect these federally-owned areas.

The water flow is interrupted by some significant parcels not yet acquired which are crucial to the free flow of the entire system. The Big Cypress Addition is at the heart of the buffer zone we need to complete to protect Everglades National Park.

Everglades National Park is the second largest national park in the continental United States.

It is the only sub-tropical park in the nation's system.

Unlike other parks such as Grand Canyon or Yosemite which are more or less self-contained -- Everglades National Park is dependent on lands outside its own boundaries -- dependent on water which can only be ensured if the land over which the water flows is publicly owned.

It is a tropical aquatic preserve -- one of only three United Nations-designed International Biosphere Reserves and World Heritage Sites in this country -- and one of only eight such designated sites in the world. Its biological diversity is unmatched in North America; it has more endangered species than any other national park in the U.S.A.

We have an obligation to the rest of the world -- not just to Floridians or even Americans -- to preserve the mysterious beauty of the Everglades and the complexities of their function as a water provider -- to preserve also the singular plant and animal and marine life species only found in the Everglades hammocks and marshes.

State and Federal cooperation in the purchases of the Big Cypress Addition is profoundly more important than a good real estate deal.

We will be securing a priceless heritage for future generations. Our grandchildren -- and their children -- will live in a world that still shelters the Roseate Spoonbill, the Ghost Orchid and the Florida Panther. We will have closed the "protective envelope" around Everglades National Park and the Big Cypress National Preserve, safeguarded the water supply for South Florida -- demonstrated that vision and good investment, in this case, are the same.

Senator WALLOP. Lawton, it is our intention to have the Full Committee act in whatever way it will. I hope you are correct in saying there is little time left in his Congress.

Senator CHILES. I hope I am, too. [Laughter.]

Senator WALLOP. Thank you, very much.

Senator CHILES. Thank you, very much.

Senator WALLOP. Senator DeConcini is serving on the Impeachment Committee and will be unable to be here this morning on the Arizona bills, but he has a statement which I will insert in the record in support of S. 2442.

[The prepared statement of Senator DeConcini follows:]

Statement by Senator Dennis DeConcini

On S. 2442, a bill to Establish the San Pedro National Conservation Area

Hearing Before the Public Lands Subcommittee

September 23, 1986

Mr. Chairman, I am delighted to be here today to testify in support of legislation sponsored by myself and Senator Goldwater to designate approximately 43,000 acres of Bureau of Land Management land in southeastern Arizona as a National Conservation Area. Mr. Chairman, I want to take this opportunity to thank you and the Ranking Minority Member, Mr. Bumpers, for scheduling this hearing on S. 2442. I know it is late in the session and the Committee has a busy schedule. Over the years, this subcommittee has been very responsive to the public land needs in Arizona and again I want to express my appreciation to you and the staff for all of your assistance over the years.

S. 2442 will designate one of the most unique and undeveloped riparian areas along the San Pedro River in Arizona as a National Conservation Area. The 31-mile stretch of land along the San Pedro River in southeastern Arizona is rich in many significant natural and cultural resources. These lands were brought into Federal ownership on March 7, 1986, when the Bureau of Land Management acquired 43,371 acres of private land along the upper San Pedro River by method of exchange. Up until this

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time, state, local, and national efforts to acquire the San Pedro lands concentrated on an outright appropriation of funds by the Congress. The Arizona State Director of the BLM, Mr. Dean Bibles, is to be credited with this exchange action. Through his initiative and perserverance, these highly valuable resource lands were acquired for the U.S. to become part of our nation's public land legacy. In these times of great fiscal concern, it is refreshing to see a Federal agency devise a way to acquire important lands with little or no cost to the U.S. taxpayer.

The San Pedro Riparian area is one of the last remaining natural riparian areas in the southwest. The bulk of the land comprising the San Pedro Riparian Area are two Spanish land grants(the San Juan de las Boquillas y Nogales and the San Rafael del Valle). These land grants are rich in wildlife, riparian, cultural, scientific, paleontological, and other resources. There are 110 known archaeological sites within the San Pedro area. It is one of the few areas in the southwestern United States with known sites of the period between the prehistoric and historic occupation of the southwest. These sites need to be protected from vandalism, and the natural environment surrounding these sites must be preserved. One site in particular, the 200-year old Spanish Presidio of Santa Cruz de Terrenate, better known as Quiburi, requires immediate stabilization work. It is the last undisturbed presidio in the U.S., and it has tremendous opportunity for public enjoyment and education through interpretation programs.

As far as wildlife values are concerned, habitat for numerous wildlife species are contained within the San Pedro Riparian area. Habitat for the largest diverse assemblage of reptiles, birds, and mammals found in the U.S. and North America for that matter, are located in the San Pedro. Mexican birds, whose northern range is southeastern Arizona, frequent this area and include such species as the Harris hawk, black hawk, zone-tailed hawk, gray hawk, aplomado falcon, elegant trogon, and others. The area also possesses great potential for the reintroductions of threatened and endangered species including jaguarundi, ocelot, and possible fish species.

While the Bureau of Land Management has existing authority under the Federal Land Policy and Management Act of 1976 to manage these lands, because of the significant resource values and the delicate character of the riparian ecosystem, I believe we need to afford this area special protection under the designation of a National Conservation Area to be managed as outlined in the legislation. Under S. 2242, the area will be primarily managed to conserve and protect the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational and recreation resources. A special management advisory committee, comprised of state and national leaders with expertise in natural resources, to assist the BLM in the formulation of a long-term management policy for these lands will further ensure the proper stewardship and protection of the area.

As a National Conservation Area the rich cultural, riparian, archeological and other significant resources along the 31-mile stretch of the San Pedro River in western Cochise County, Arizona will be preserved for future generations. At the same time, the designation will assure continued access to and use by the public for recreation and educational purposes.

Mr. Chairman, companion legislation was introduced in the House by virtually all members of the Arizona Congressional Delegation. The bill which has passed the House, has the strong endorsement of the State of Arizona and many interests both in Arizona and nationally. I would ask that articles which appeared in Arizona newspapers endorsing the San Pedro legislation appear in the record after my remarks.

At this time, I would like to recommend to the Committee that the changes adopted by the House be incorporated into the Senate bill. The only other change I would recommend at this time is an expansion of the area to accomodate approximately 5,336 acres of private and state land within the area and immediately adjacent to the southeastern boundary. The BLM is currently attempting to acquire these lands and private owners have expressed an interest in exchange. The additional land will allow the BLM to protect the entire riparian wildlife corridor. It will also bring those lands with associated historic and

archaeological values into the area. These acquisitions will further assist in reducing the number of smaller inholdings within the San Pedro and provide for more efficient management of the area by the BLM. The map including the 5,000 plus acres has been drawn up by the BLM. The new map will expand the area to 48,707 acres.

Mr. Chairman, a lot of work and energy has gone into the management of the San Pedro area both by the BLM and many interested citizens in the State of Arizona over the past year. I can think of few areas in the southwest, Mr. Chairman, that are more deserving of special status and special Federal protections than the San Pedro Riparian Area. It encompasses an entire fragile ecosystem which can be easily tipped off balance by the slightest misuse. It is an area I am proud to be associated with and one which I believe will go down in history as one of our wisest Federal acquisitions. Enacting legislation this session which affords specific protections to this land will add impetus to the BLM's management planning process for the the area. While I recognize we have little time remaining in the current session, it is my hope the Committee will take expedited action on the San Pedro legislation so there will be no questions in anyone's mind how this area will be preserved for future generations.

THE PHOENIX GAZETTE
Phoenix

MAY 20 1986

ARIZONA PRESS CLIPPING
BUREAU - Phoenix

God's apology deserves protection

The U.S. Bureau of Land Management lived up to its name admirably when it acquired 43,400 acres of land along the San Pedro River in Cochise County in a swap that gave a private firm undeveloped land west of Phoenix.

The area acquired by BLM, located between Hereford and St. David and long subject to benign neglect, contains the remains of a Spanish presidio, more than 100 archaeological sites and 200 species of birds and other wildlife.

Recognizing the importance of proper management for the area, Rep. Jim Kolbe, R-Ariz., introduced a bill in the House that would create the San Pedro Riparian National Conservation Area. Sens. Barry Goldwater, R-Ariz., and Dennis DeConcini, D-Ariz., introduced a similar measure in the Senate.

Kolbe's measure would create a public advisory council to assist the BLM in conserving a "history-rich area for generations to come." It would bar mining, and certain areas could be declared off limits to visitors. Boundaries of the conservation area, from two to three miles wide, would have to be made final by the Interior Department within five years.

The area contains nearly 20 percent of the nation's nesting population of the rare gray hawk, it's a habitat of raccoons, muledeer and whitetail deer, javelina and bobcats. The river banks are lined with cottonwood trees. Beautiful beyond description, some think the area was God's apology for creating the burning Arizona deserts.

Rep. Morris Udall, D-Ariz., chairman of the House Interior and Insular Affairs Committee, supports the bill and has agreed to hold hearings on it. The sooner, the better, because this land deserves help both from the BLM and the people of Arizona. It should be part of our national trust.

4A Sierra Vista Herald and Bisbee Review, Tuesday, March 18, 1986

Creative land swap shows big promise

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We congratulate the federal Bureau of Land Management and all the other people involved in a creative land swap that promises to enhance and protect wildlife, other natural resources and historic sites along a 30-mile stretch of the San Pedro River.

We hope the promise is fulfilled.

The BLM, often criticized and sometimes castigated in its efforts to fulfill a difficult mission, has taken a bold and imaginative step in this venture.

Completion of what the agency said is "perhaps the most significant land exchange involving the Bureau of Land Management in Arizona" was announced March 7 by BLM Arizona Director D. Dean Bibles.

The site ranges from two to three miles wide from near Hereford northward to near St. David, and totals about 43,400 acres, or 67.8 square miles.

Along that stretch is found perhaps the best broadleaf riparian ecosystem remaining in Arizona, the agency says.

The wildlife includes about 161 species of birds, 80 species of mammals, a dozen kinds of fish and 68 kinds of reptiles and amphibians. There is a cienega, a marsh, that resembles what much of the San Pedro River bottom looked like before mankind began making changes.

There are more than 100 known prehistoric and historic sites and nine known fossil sites, and perhaps more may be found, by appropriately cautious and non-destructive exploration.

The land was owned by Tenneco Inc. The BLM owned 40,895 acres (63.8 square miles) of undeveloped desert land about 15 miles west of Luke Air Force Base in Maricopa County. Independent appraisers set a value of about $26.5 million on each parcel.

Tenneco wanted to sell its land. It found a buyer, and the BLM stepped in with its plan. Presto! Tenneco sold to White Tank Associates and White Tank Associates then transferred titles with the BLM. White Tank plans to develop a retirement community on the Maricopa County property.

Gov. Bruce Babbitt congratulated Tenneco — and we do likewise — for its patience and readiness to work with public agencies in this regard.

"The placement into public ownership of these lands has been a long-time personal goal of mine," Babbitt said.

U.S. Sen. Dennis DeConcini said, "Through this BLM initiative, a unique area of diverse resources, breathtaking beauty and historic values will be preserved and protected for Arizonans and all Americans to enjoy for years to come."

U.S. Rep. Jim Kolbe, whose district includes the San Pedro property, said, "The completion of the transaction between the BLM and Arizona White Tank Associates is an important first step in our effort to protect a unique area in southern Arizona that deserves our attention."

In anticipation of the venture, the BLM initiated organization of a steering committee.

Sierra Vista Mayor Jean Randle is a member, as is Cochise County Supervisor Judy Gignac. Others include representatives of: Sens. DeConcini and Barry Goldwater, Congressmen Kolbe, Morris Udall and John McCain, Gov. Babbitt, and the BLM Safford District. The public-at-large is represented by Bill Roe of Tucson.

So, it is done, and the irreplacable property is in the hands of the public.

But that does not mean — and in this case it should not mean — that members of the public can immediately set forth to walk, ride, camp or whatever upon the land.

In the first place, some of the property is leased for sand and gravel operations and some is leased for cattle grazing through the year 1987, and the BLM intends to honor those leases.

Meanwhile, the BLM needs time to implement an interim plan for multiple usage, possibly including some use by owners of all-terrain vehicles. They, along with other trespassers, already have abused parts of the site.

State officials have indicated interest in developing two state parks along the stretch, one to include the mining ghost town of Fairbanks and the site of the old Spanish presidio at the former Indian village of Quiburi, the other to be near the Highway 90 crossing of the river.

The BLM estimates that completion of a permanent plan will take two years.

Looking at the long term, we believe this venture, this 43,400 acres, can be an enormous asset to the people of the entire area surrounding it; an attraction to tourists, to photographers, to painters — and a place to visit quietly, to pause, to rest, to reflect.

Over the months and the years, the names and faces at the BLM and on the steering committee will change. We hope the goal will not.

There is an underlying challenge, an unanswered question, that remains:

What agency, what mechanism, will ensure the enhancement and protection of the quality of the San Pedro River itself as it flows into this protected place?

Arizona Daily Star

Tucson, Tuesday, September 2, 1986

Saving history

San Pedro study maps mills, ruins

By Tom Turner
Star Arizona Daily Star

FAIRBANK — The buff colored mobile home stands next to a piece of local history, the remains of the Fairbank Mercantile Store, a hub of San Pedro Valley life in the 1870s.

Inside the government's mobile office, Faith Campbell, on his hands and knees, unrolls surveyors' maps across the floor.

"Look at these things," he says. "They go on and on. There are a dozen or more old mills sited here."

That's the recent history of the 30-mile-long stretch of the San Pedro River that the Bureau of Land Management intends to preserve for posterity and public use. The mills processed the tons of silver ore mined near Tombstone in the late 1870s.

The towns of Fairbank, Charleston and Contention City grew around the mills. When the mines closed in the late 1880s, the mills and the towns were abandoned.

Campbell, a BLM biologist, is manager of the San Pedro conservation area project.

The 43,400-acre preserve acquired by the BLM in March is closed to the public now. It will remain closed until BLM does a complete inventory on all its resources, natural and cultural; develops a plan to manage the area; and drafts an environmental impact statement on that management plan. All that is to be completed by April 1988.

Rancher Frank Fitzgerald, who now leases the BLM land, plus 100,000 adjacent acres, to graze cattle, has kept a long tradition of limiting public access to the property.

That worked to protect some of the area's more delicate artifacts, such as the 200-year-old Spanish Presidio Santa Cruz de Terrenate, and the archaeological digs at Murray Springs.

Pieces of Terrenate — a corner of the commandant's house, bits of chapel wall and a ridge of melted adobe that once was the presidio wall — are still visible. Archaeologists have laboriously uncovered the Terrenate ruins and mapped the old presidio so that visitors can one day tour it.

Murray Springs has been called the most significant Clovis Indian site in the United States. BLM archaeologist Meredith "Penny" Rucks has a special interest in Murray Springs.

Clovis Indians lived in Southeastern Arizona nearly 12,000 years ago. Murray Springs is also considered among the top 10 geomorphologic sites in North America, Rucks said, with the history of ages in human existence almost perfectly preserved in erosion-exposed layers of earth.

"There's an opportunity to interpret a whole ecosystem here, from every aspect.

See BLM PRESERVING, Page 2B

Arizona Daily Star

Tucson, Tuesday, September 2, 1986

BLM preserving a rich area of San Pedro Valley

Continued from Page 1B

and its potential use for education is fantastic," Rucks said.

"OK," she said, "you can interpret the whole occupation of human history of the Southwest in this area. Well, that's neat. But what's even neater is you can do it in an environmental context: how the local environment dictated just how this area was used and the whole interplay between man and animal throughout history."

BLM intends to cancel Fitzgerald's grazing lease as of December 1987, as it is allowed to do under the terms of the land exchange that brought it into federal ownership. The shady glen that shelters the century-old Rancho de Boquillas house and outbuildings, now occupied by Fitzgerald and his family, will probably become BLM project headquarters.

Cattle grazing in the area will be prohibited for at least 15 years, time enough for BLM to see what will grow there when cattle are not keeping the growth close-cropped.

"You're gonna miss these cows when the grass gets up to your navel," Campbell teased as he and Rucks looked over a park-like riverbank near Lewis Springs.

"We can live without the cows," Rucks shot back with a laugh.

"Yep," Campbell agreed, calling over the bawling of a nearby steer, "we can."

Campbell stopped walking down a broad wash just north of the old Charleston Road crossing. He squatted down to examine large tire tread marks.

"The boys and their four-wheelers have been here since the last rain," he said. "I can't wait until Kevin gets here. He just loves off-roaders."

Campbell was talking about Kevin Freeman, a BLM ranger now in California who soon will be assigned to the San Pedro project to enforce BLM's use prohibitions. Those prohibitions include off-road vehicles.

They also include the wildcat firewood cutting that has taken its toll on a nearby mesquite grove. Other activities, such as hunting, will be strictly controlled.

"This area is thick with jackrabbits and cottontails, too," said Jim Gacey. Gacey, another BLM biologist, was talking about a broad floodway near the Hereford Road bridge, lined on either side by towering Fremont cottonwood trees.

The cottonwoods are named after the general, John C. Fremont, who wrote about them in his journals and who was Arizona's first territorial governor.

The river, swollen with recent rains, rolled northward, 10 to 12 feet wide in places, the color of butterscotch. Graceful willows and walnut trees dotted the water's edge.

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BLM is recruiting volunteers, mostly university students, to [illegible] emerate birds, reptiles, amphibians, mammals, fish and vegetation. Each survey takes several months to conduct.

"You know, 90 percent of all the animals found in this part of the state can be seen in riparian areas (waterside groves of trees and grasses); 70 to 75 percent breed and nest there," Gacey said.

Riparian growth, wildlife nesting and feeding places do not end at the clean rectangular boundaries of the BLM property. The proposed conservation area will have to be enlarged if the ecosystems Rucks mentioned are to be encompassed.

The House bill declaring the area a National Conservation Area originally limited the area to 60,000 acres. The BLM and environmentalists objected. The bill as passed contains no limit, but specifies that acquisition of additional land outside the existing boundaries will require separate acts of Congress.

Senator WALLOP. Senator Hawkins has a Special Order and will be heard as she finishes that on the Floor. Whenever she comes in, we will invite her testimony.

Senator Broyhill, on the Horsepasture River.

STATEMENT OF HON. JAMES T. BROYHILL, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator BROYHILL. Thank you, Mr. Chairman. I want to thank you very much for scheduling this hearing today. I would ask that my statement be made as a part of the record, and that I be recognized to summarize my statement.

Senator WALLOP. By all means, Jim. That is appreciated, and it will be part of the record.

Senator BROYHILL. I want to say at the outset that I am representing a great number of not only individuals but organizations that are joined together in making sure that we can protect this natural resource by designating a portion of the Horsepasture River as a National Wild and Scenic River, part of the National Wild and Scenic River System.

These groups began to work sometime ago, three or four years ago. There was an effort at one time, awhile back, of a power group to dam up this beautiful section of the river. That of course is behind us. For generations this river has been used; this portion of the river has been a favorite for hikers and for fishermen and so forth, but the only way I can really describe it to you, Mr. Chairman, is to show you some pictures from the Wildlife Magazine entitled "Wildlife in North Carolina."

I think you have got a copy of it there in front of you. I hope you would take just a moment to leaf through this and see some of the beautiful, beautiful scenery. There is nothing like it in Eastern America, or any other place. There may be some places in your part of the country, I do not know, that might be comparable, but this is a river that drops some 2000 feet within a short span of about 14 miles.

There are a number of falls there. Though I can show you these pictures, I cannot give you the sound or the roar of the falls. It is just very spectacular. It is something that should be saved, and I will just rest my case.

[The prepared statement of Senator Broyhill follows:]

STATEMENT OF THE HONORABLE JAMES T. BROYHILL
SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE
CONSERVATION, COMMITTEE ON ENERGY AND NATURAL RESOURCES
SEPTEMBER 23, 1986

I AM MOST APPRECIATIVE OF THE OPPORTUNITY TO ADDRESS THIS PANEL ON THE MERITS OF THE HORSEPASTURE RIVER. IT IS, INDEED, A PRIVILEGE FOR ME TO BE HERE TODAY. I AM REPRESENTING A MULTITUDE OF INDIVIDUALS AND ORGANIZATIONS WHO HAVE BEEN TIRELESS IN THEIR EFFORTS TO ENSURE THE PROTECTION OF THIS NATURAL RESOURCE BY HAVING IT DESIGNATED AS A PORTION OF THE NATIONAL WILD AND SCENIC RIVER SYSTEM.

ON JULY 31, 1986, I INTRODUCED S. 2707, A BILL TO AMEND THE WILD AND SCENIC RIVERS ACT BY DESIGNATING A SEGMENT OF THE HORSEPASTURE RIVER IN THE STATE OF NORTH CAROLINA AS A COMPONENT OF THE NATIONAL WILD AND SCENIC RIVERS SYSTEM.

ON JULY 28, 1986, THE U.S. HOUSE OF REPRESENTIVES PASSED THIS LEGISLATION BY VOICE VOTE. ALTHOUGH I AM ENCOURAGED BY THE HOUSE ACTION, I CAN ASSURE YOU THAT IT IS THE PRODUCT OF YEARS OF EFFORT.

IN 1984, A BROAD COALITION OF INDIVIDUALS AND GROUPS BEGAN TO WORK TOGETHER TO ENSURE THE PERMANENT PRESERVATION OF THE HORSEPASTURE RIVER. THIS INCLUDED STATE AND FEDERAL REPRESENTATIVES, DUKE POWER COMPANY, THE TRUST FOR PUBLIC LANDS, A

NON-PROFIT LAND CONSERVATION GROUP, AND FRIENDS FOR THE HORSEPASTURE, A LOCAL CITIZENS GROUP.

NOW I'D LIKE TO EXPLAIN WHY THIS RIVER IS HELD IN SUCH HIGH ESTEEM. IN NORTH CAROLINA, WE ARE FORTUNATE TO HAVE AN ENVIABLE QUANTITY AND DIVERSITY OF BREATHTAKING NATURAL RESOURCES. WHY, THEN, HAS SUCH AN ENORMOUS AMOUNT OF EFFORT BEEN COMMITTED TO THE DESIGNATION OF A 4.25-MILE STRETCH OF THE HORSEPASTURE RIVER, LOCATED IN THE FAR-WESTERN PART OF THE STATE? IT'S BECAUSE THE HORSEPASTURE RIVER IS VERY SPECIAL, PARTICULARLY FOR ITS RECREATIONAL AND SCENIC VALUE.

IN A COUNTY KNOWN AS "THE LAND OF THE WATERFALLS," THE WATERFALLS ON THE HORSEPASTURE RIVER STAND OUT AS THE MOST SPECTACULAR. HORSEPASTURE RIVER GORGE IS THE MOST RUGGED OF THOSE IN THE BLUE RIDGE ESCARPMENT. IT HAS THE HIGHEST AND STEEPEST WALLS AND IT IS THE NARROWEST. IN JUST FOUR MILES, THE RIVER DROPS 1,700 FEET OFF THE BLUE RIDGE ESCARPMENT INTO ROCKY GORGES THROUGH RUGGED TERRAIN, SPILLING OUT INTO LAKE JOCASSEE IN SOUTH CAROLINA. MANY PEOPLE HAVE SAID THE MOST IMPRESSIVE OF THE RIVER'S ATTRACTIONS IS THE 200-FOOT RAINBOW FALLS, A MINI-NIAGARA NAMED FOR THE RAINBOW THAT CAN BE SEEN IN THE MISTS ABOVE THE FALLS.

EXTENSIVE WOODLANDS AND ROUGH TERRAIN IN THE HORSEPASTURE RIVER AREA IS HOME TO VARIED AND ABUNDANT WILDLIFE POPULATIONS. BLACK BEAR ARE PRESENT AND HEAVILY HUNTED. DEER, TURKEY, RACCOON, GROUSE AND GREY SQUIRREL ARE ABUNDANT AS WELL. MORE THAN TWENTY FISH SPECIES, FOUR OF WHICH ARE OF SPECIAL CONCERN, HAVE BEEN

IDENTIFIED IN THE RIVER, CLASSIFIED BY THE STATE AS "DESIGNATED TROUT WATERS."

FOR GENERATIONS, THE RIVER HAS BEEN A FAVORITE OF HIKERS, SWIMMERS, FISHERMEN, CAMPERS, AND PICNICKERS. ON A TYPICAL SUMMER WEEKEND, AS MANY AS 300 VISITORS HIKE THE NARROW, UNMARKED TRAIL TO RAINBOW FALLS AND TO THE OTHER WATERFALLS, SWIMMING AND FISHING HOLES, AND PICNIC SITES THAT SURROUND IT. THE RIVER IS FAMOUS AMONG FISHERMEN IN THE REGION FOR ITS FINE TROUT FISHING.

EFFORTS TO PRESERVE HORSEPASTURE RIVER BEGAN IN AUGUST 1984, WHEN THE FEDERAL ENERGY REGULATORY COMMISSION GAVE PRELIMINARY APPROVAL TO CARRASAN POWER COMPANY'S APPLICATION FOR A LICENSE TO DAM THE HORSEPASTURE RIVER AT DRIFT FALLS AND TO DIVERT THE RIVER TO A POWERHOUSE BELOW WINDY FALLS. AFTER THIS HAPPENED, NORTH CAROLINIANS UNITED TO PRESERVE THE HORSEPASTURE IN ITS WILD AND SCENIC STATE.

IN 1984, LEGISLATION WAS ENACTED TO PREVENT THE COMMISSION FROM LICENSING CARRASAN POWER COMPANY TO DAM THE HORSEPASTURE FOR THREE YEARS WHILE THE HORSEPASTURE'S WILD AND SCENIC QUALITIES WERE STUDIED. NORTH CAROLINA SENATOR JESSIE HELMS WAS SUCCESSFUL IN GUIDING THIS LEGISLATION THROUGH THE U.S. SENATE. PRESIDENT REAGAN SIGNED THE MEASURE IN OCTOBER 1984.

SINCE THEN, THERE HAVE BEEN NUMEROUS EFFORTS AT THE STATE LEVEL TO PRESERVE HORSEPASTURE RIVER. IN THE SUMMER OF 1984, THE NORTH CAROLINA DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT STUDIED THE NATURAL AND SCENIC QUALITIES OF THE HORSEPASTURE. IN OCTOBER, THE DEPARTMENT CONCLUDED THAT THE HORSEPASTURE RIVER QUALIFIED FOR DESIGNATION AS A NORTH CAROLINA

NATURAL RIVER UNDER STATE LAW. THE STATE PARKS STUDY COMMISSION ALSO RECOMMEND THE STATE DESIGNATION AND, FINALLY, THE GENERAL ASSEMBLY PASSED LEGISLATION TO THIS EFFECT.

ALSO IN THE FALL OF 1984, CONGRESSMAN BILL HENDON BROUGHT U.S. SECRETARY OF ENERGY DONALD HODEL CAME TO NORTH CAROLINA AND CONVICED HIM TO OPPOSE THE LICENSING OF CARRASAN.

AMONG THE FEDERAL EFFORTS ON BEHALF OF THE HORSEPASTURE RIVER, THE CONGRESS LAST YEAR APPROVED CONGRESSMAN HENDON'S REQUEST FOR $1 MILLION TO PURCHASE 435 ACRES OF PRIVATELY-OWNED LAND ALONG THE HORSEPASTURE, HELPING CLEAR THE WAY FOR WILD AND SCENIC RIVER DESIGNATION. BY INCLUDING THE HORSEPASTURE IN THE NATIONAL WILD AND SCENIC RIVER SYSTEM, THE CONGRESS WILL CUT SHORT THE THREE-YEAR STUDY OF THE RIVER IT DIRECTED IN 1984.

HAVING BEEN BORN AND BRED IN NORTH CAROLINA, AND REPRESENTING THE CITIZENS OF NORTH CAROLINIA IN THE U.S. HOUSE OF REPRESENTATIVES FOR OVER 23 YEARS, I CERTAINLY WILL NOT DENY MY STRONG LOVE AND DEVOTION TO THIS PART OF THE COUNTRY. I BELIEVE THE STATE OF NORTH CAROLINA HAS A WELL-DESERVED REPUTATION FOR PROVIDING AMERICANS NATIONWIDE WITH A PLACE TO GO TO ENJOY THE BEAUTY OF OUR COUNTRY -- OUR MOUNTAINS, OUR OCEANS, OUR WOODS, OUR WILDLIFE, AND OUR RIVERS.

OVER THE YEARS, IT HAS BEEN REWARDING FOR ME TO SEE MORE AND MORE PEOPLE MOVING TO OUR STATE, PARTICULARLY YOUNG FAMILIES, MOTIVATED IN PART BY THE TEMPERATE CLIMATE AND NATURAL RESOURCES. I BELIEVE IT IS IMPORTANT TO PRESERVE FOR OUR CHILDREN AND FUTURE GENERATIONS THE SPECTACULAR NATURAL BEAUTY OF THIS AREA THAT HAS ENRICHED THE LIVES OF SO MANY GENERATIONS BEFORE US.

I WANT TO THANK THIS PANEL AGAIN FOR ITS ATTENTION TO THIS THIS PROPOSAL, AND I WANT TO REITERATE MY DEEPEST SUPPORT FOR THE INCLUSION OF THE HORSEPASTURE RIVER IN THE NATIONAL WILD AND SCENIC RIVERS SYSTEM AND YOUR FAVORABLE CONSIDERATION OF S. 2707. I HOPE THAT THE COMMITTEE WILL ACT ON THIS MEASURE WITHOUT FURTHER DELAY.

THANK YOU.

Senator WALLOP. Thank you very much.

Senator BROYHILL. I will only add that, as you know, the House passed this bill on July the 28th. This bill of course is to follow on that action. The bill in the House was sponsored by my colleague in the House, Billy Hendon, and I will echo what the Senator from Florida said. It is important that we get this bill through, and I would hope that the Committee would give early consideration to it this week so that we can put it on the calendar before we leave here next week.

Senator WALLOP. Jim, I appreciate it. We will make every effort to do that. It is indeed beautiful. I appreciate your speed in introducing companion legislation over here for purposes of allowing us to hold a hearing. It is not unusual for us to have mystical things foisted on us in the closing moments of sessions by the House. We have made it a policy of this Committee not to pass legislation without a hearing.

I appreciate your understanding in that, and I appreciate how quickly you were able to get it to us so that we could hold this hearing.

Senator BROYHILL. I certainly understand that, and to my knowledge there is no opposition to this legislation. The Administration supports it, and all of the local groups support it. The power company in our area, Duke Power Company, is a strong supporter of it. So I know of no one who is opposed to it.

Senator WALLOP. Thank you very much.

Senator BROYHILL. Thank you.

Senator WALLOP. The next witness is our colleague from the House, the Honorable Tom Lewis, from the 12th District of Florida.

STATEMENT OF HON. TOM LEWIS, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA

Mr. LEWIS. Good morning, Mr. Chairman. It is nice to see you again, and it is a pleasure to testify before your Committee.

The legislation that I want to discuss very briefly that Senator Chiles had discussed earlier is House Bill 4090 which has to do with the acquisition of a major portion of Southwest Florida known as the Big Cypress National Preserve addition.

This area is one of the last remaining parcels of pristine land left in Florida, Mr. Chairman. This area is unquestionably an environmental area of importance and beauty in Florida. Most important, it is part of our watershed. This land is habitat for a wide variety of plants and animals. You have heard about the panther, the bald eagle, and the native orchids, all of these things.

The addition of this land to the Big Cypress National Preserve would provide a much needed buffer zone for the Everglades National Park, a State resource and a National treasure.

There is absolutely no doubt that this bill is an important piece of environmental legislation. However, it is vital to recognize how much importance is placed upon it as a water resource area for south Florida and for over 4.5 million people of south Florida. If we do not preserve this area, we will lose the chance to keep one of our major resource areas for recharging of our water supply, and

we are going to come down to the fact that we will have to make a decision whether we are going to have water for agriculture or for humans, and how are we going to divide that.

During the hearings on the House side, Mr. Chairman, this measure received wide praise and support and unanimous bipartisan support. A version of the bill was approved by the Full House on July 28, and adds 126,000 acres to the Big Cypress National Preserve. There is no doubt that this area is worth preserving, Mr. Chairman, if for nothing else than to protect it for its wild, scenic beauty and for the south Florida residents as a water recharge area.

I want to take a moment to thank my good friend, Senator Lawton Chiles, who introduced the companion bill in the Senate. We worked for two years on this legislation prior to filing it last January, and he and our staffs are proud of this legislation. We think it is something of major importance not only to Florida but to the United States, and we certainly would like for your Committee to indulge us, and as the previous Senator stated, do everything you can to see that this legislation passes during this session of Congress.

It has been a pleasure to testify before you, Mr. Chairman. Thank you very much for holding this hearing.

[The prepared statement of Mr. Lewis follows:]

Statement of Honorable Tom Lewis
Subcommittee on Public Lands, Reserved Water
and Resource Conservation
Tuesday, September 23, 1986

Thank you, Mr. Chairman, for the chance to testify on the importance of the Big Cypress National Preserve Addition.

This legislation provides a unique opportunity to protect a major land area in Southwest Florida for an important addition to the Big Cypress National Preserve.

One of the few remaining large parcels of pristine land left in Florida, this area is of unquestioned environmental importance and beauty. As part of the watershed of the Big Cypress Preserve and Everglades National Park, this land is habitat for a wide variety of plants and animals; including the Florida Panther, the bald eagle, native orchids and many other species now at risk. The addition of these lands to the Big Cypress National Preserve would provide a much needed buffer zone for Everglades National Park, a state resource and national treasure.

There is absolutely no doubt that this bill is an important piece of environmental legislation. However, it is vital to recognize that it is also much, much more. As surely as wildlife in the Everglades are linked to the wetlands for survival, so too are the growing urban populations of South Florida dependent upon these very same wetland areas as recharge sources for drinking water. This legislation is needed to ensure that South Florida's water supply will keep pace with its population increases.

During hearings on the House side, this measure received widespread praise and unanimous, bipartisan support. A version of this bill was approved by the full House on July 28th and adds 136,000 acres to the Big Cypress National Preserve. Additionally, the House Subcommittee on National Parks and Recreation adopted amendments designed to help clarify and enhance the intent and viability of this legislation.

Clearly, there is no doubt that this area is worth preserving and enhancing for its unique wild beauty, but it's also worth protecting because it forms the water supply system for more than 4.5 million residents of South Florida. Therefore, because of the significant public benefit associated with the acquisition of this land, I urge swift action on the part of this Subcommittee to bring this important legislation to the Senate floor.

At this time, I want to take a moment to thank my good friend, Senator Lawton Chiles. Before we introduced this legislation together in January of this year, he and I and our staffs worked diligently for two years in pulling together a variety of sources in Florida and Washington.

There were times that we didn't think we'd get to this point. We've persevered, though, and we think we have produced the best possible product to bring about this important acquisition. It's also nice to have the full support of your state delegation.

Again, Mr. Chairman, thank you for the opportunity to speak on behalf of this vitally important legislation.

Senator WALLOP. Thank you, Congressman Lewis. I appreciate your taking time to come over here this morning.

Mr. LEWIS. Thank you.

Senator WALLOP. Next is our colleague and neighbor from Colorado, the Honorable Mike Strang from the 3rd District of Colorado.

I might tell you that after the last census there was a lot of reshuffling with the seats moving West, and somebody asked me if Wyoming got another seat. I told them, well, we just earned the one we already have. We got up to the full population.

STATEMENT OF HON. MICHAEL L. (MIKE) STRANG, A U.S. REPRESENTATIVE FROM THE STATE OF COLORADO

Mr. STRANG. Mr. Chairman, I appreciate the opportunity to appear before you, and I hope you do get another seat because you people fill the three you have got awfully well.

Mr. Chairman, I thank you for allowing me the opportunity to present a few brief comments on H.R. 2921 concerning the issuance of easements for certain irrigation ditches crossing Forest Service lands. This bill passed the House under suspension of the rules on May 7, after several months of work and sensitive compromise. Although a similar bill was adopted by the House in the 98th Congress, it did not enjoy the support of the Administration.

I am pleased to note that with the personal and active involvement of Chairman John Seiberling, Deputy Assistant Secretary Doug McCleery, and Chief Max Petersen and his staff and the House Agricultural Committee, the legislation before you does enjoy the support of the Administration.

As a result of those efforts, we were able to fashion a product that focuses on a particular problem brought about by the passage of FLPMA in 1976 regarding ditch right-of-ways for irrigation of livestock watering that were in place prior to 1976. This affects ranchers in most of the Western States.

Working with the Forest Service, we reached agreement on language to meet most of their concerns and most of the concerns of others, especially farmers and ranchers directly affected by the legislation. H.R. 2921 tightens the scope of the granting of permanent easements without a requirement for reimbursement by (1) requiring the application have a valid, existing water right; (2) that the water conveyance facilities have been in substantially continuous use solely for agricultural livestock watering; and (3) that recordable survey and other information be available.

These were requested by the Forest Service as constructive improvements and were agreed to in the House. Provisions have also been included to allow for the transferability of easements.

The water rights' portion of the bill is supported by precise report language to state clearly there is no Federal claim of any kind to be construed concerning the reservation, acquisition, or use of water. This is the second time in the past four years that Congress has attempted to resolve this matter. We have never been closer to resolution. Throughout most of the Western States, farmers and ranchers who were uncertain about the status of their ditches over Forest Service lands and those who have not been told

by the Forest Service they were in trespass need to have these burdens resolved.

We need to pass this legislation now. The Forest Service is just as sincere in wanting to resolve this issue quickly. Mr. Chairman, you will hear testimony today from some who desire to expand this legislation to include other types of right-of-ways and water conveyance systems used for other purposes such as towns that have bought ditches or own a portion of a ditch company.

I am totally in sympathy with those concerns, but now is not the time to address those issues as this bill is not the vehicle to attempt to try it. I am well aware of interests others have to broaden this legislation. I am just as certain that such action, should it occur, will result in the death of this legislation this year. There are legitimate concerns for other types of water conveyance systems and other types of rights of way that result from the passage of FLPMA and from its interpretation by the Forest Service.

In our efforts in the House, we found the Public Lands Subcommittee was not interested in expanding the scope of this issue in the legislation at this time. It is most important that these concerns be addressed, and I have pledged to those interests that I will do everything I can in the next Congress to assist in that effort.

My hope is that the Committee will concur in the bill before you, address this very specific issue now, and help us to work on related matters in the 100th Congress.

Mr. Chairman, you will hear some testimony today that, whereas in Colorado they have been successful in holding the Forest Service at bay on this issue, in Utah they have not. I do not know what has happened in Wyoming, but here is a list of ditch companies that have been clobbered by the Forest Service for assessment fees.

So I do really appreciate your allowing me to testify, and I wish you luck on this bill.

[The prepared statement of Mr. Strang follows:]

TESTIMONY
of
HONORABLE MICHAEL L. STRANG
Third District - Colorado

on
H.R. 2921

Before the
SENATE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER RIGHTS
and RESOURCE CONSERVATION

Committee on Energy and Natural Resources

September 23, 1986

MR. CHAIRMAN, thank you for allowing me the opportunity to present a few brief comments about H.R. 2921, concerning the issuance of easements for certain irrigation ditches crossing Forest Service lands.

H.R. 2921 passed the House under Suspension of the Rules on May 7, 1986, after several months of work and sensitive compromise. Although a similar bill was adopted by the House during the 98th Congress, it did not enjoy the support of the Administration. I am pleased to note that with the personal and active involvement of Chairman John Seiberling, Deputy Assistant Secretary Doug MacCleery, Chief Max Peterson and his staff, and the House Agriculture Committee, the legislation before you does enjoy the support of the Administration.

As a result of those efforts we were able to fashion a product that focuses on a particular problem brought about by the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), regarding ditch rights-of-way used for irrigation or livestock watering that were in place prior to 1976.

Working with the Forest Service, we reached agreement on language to meet most of their concerns and most of the concerns of others, especially farmers and ranchers directly affected by the legislation. H.R. 2921 tightens the scope of the granting of permanent easements, without a requirement for reimbursement, by:

-- requiring that the applicant have a valid existing water right under applicable state law;

-- that the water conveyance facilities have been in substantially continuous use solely for agricultural, livestock watering;

-- and that a recordable survey and other information concerning the water conveyance facility be provided the Forest Service.

All these were constructive improvements requested by the Forest Service and others to assist in the administration of granting the permanent easements.

Provisions have also been included to allow for the transferability of the easements; allowances for modifications of the original facilities as of October 21, 1976; authority for the Secretary to issue multi-year permits; and provisions for the Secretary to make emergency repairs and assess the holder of the right-of-way.

The water rights portion of the bill is supported by precise report language to state clearly there is no Federal claim of any kind to be construed regarding the reservation, acquisition or use of the water.

This is the second time in the past four years the Congress has attempted to resolve this matter. We have never been closer to a resolution. Throughout most of the western states, farmers and ranchers who are uncertain about the status of their ditches over Forest Service lands, and those who have been told by the Forest Service they are in trespass, need to have those burdens removed. We need to pass this legislation now. The Forest Service is just as sincere in wanting to resolve the issue quickly.

Mr. CHAIRMAN, you will hear testimony today from some who desire to expand this legislation to include other types of rights of ways, and water conveyance systems used for other purposes. While I am in sympathy with those concerns, now is not the time to address those issues, and this bill is not the vehicle to try to attempt it. I am well aware of interests others have to broaden this legislation. I am just as certain that such action, should it occur, will result in the death of this legislation this year.

There are legitimate concerns for other types of water conveyance systems and other types of rights-of-way that result from the interpretation of FLPMA. In our efforts in the House, we found the

Public Lands Subcommittee was not interested in expanding the scope of this issue in this legislation at this time. It is most important that those concerns be addressed, and I have pledged to those interests that I will do everything I can in the next Congress to assist in that effort.

My hope is the Committee will concur in the bill before you to address this very specific issue now, and help us work on related matters in the 100th Congress.

Again, thank you for the opportunity to meet with you.

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Senator WALLOP. Mike, thank you very much. I appreciate your taking the time to come over here this morning.

Senator Goldwater has submitted a statement for the San Pedro legislation.

As well as has Congressman Mo Udall in support of the legislation.

[The prepared statements of Senator Goldwater and Mr. Udall follow:]

TESTIMONY OF SENATOR BARRY GOLDWATER

BEFORE THE SENATE SUBCOMMITTEE

ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

SEPTEMBER 23, 1986

Mr. Chairman, thank you for giving me this opportunity to testify in support of S. 2442 and H.R. 4811, legislation which would establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona. The San Pedro River riparian area in question consists of 43,371 acres, is about 31 miles long, and is two to three miles wide. The northern border is near St. David and the southern boundary is near Hereford. This area affected by the legislation is one of the Southwest's most important prehistoric, historic, and natural areas.

In March, 1986, the Bureau of Land Management acquired title to the riparian area through a land exchange with Arizona White Tank Associates, a group which purchased the land from its previous long time owner, Tenneco, Inc. The title transfer was the result of many months of negotiation under the leadership of Dean Bibles, our Arizona State BLM Director, who deserves our many thanks. And, as a matter of fact, Mr. Bibles is currently negotiating for additional lands to be added to the area.

In accordance with the bill's purposes, this desert riparian habitat is very rich and unique in diversity, having great wildlife, archaeological, paleontological, scientific, cultural, educational, and recreational resources. It is home to more than 260 bird species, including raptors such as the gray hawk, black hawks, ospreys, peregrine and aplomado

falcons. One can also find 80 species of mammals, including the mule and whitetail deer, 12 species of fish, and 68 species of reptiles and amphibians.

On the prehistoric level, there are at least nine fossil beds going back some 250,000 years. In addition, the land includes over 120 known archaeological and historic sites. Most of them are located on land which was previously two Mexican land grants, the San Juan de las Boquillas y Nogales and the San Rafael del Valle. An outstanding historic site in the area in the Spanish fortress Santa Cruz de Terrenate, founded August 22, 1775. There are also historic ghost towns and mill sites.

Mr. Chairman, with all that I have mentioned above, you can well imagine the need to protect and enhance the riparian habitat and the area's archaeological and historical properties. Now that the Federal Government has acquired the lands, we have the opportunity to do just that.

As part of the land exchange, the Bureau of Land Management has agreed to honor the three existing land lease agreements, the primary one expiring at year-end 1987. Because of this condition, the area will be not be open to the general public until the leases expire. Regarding a long-term management plan of the area, the legislation calls for the establishment of a San Pedro Riparian National Conservation Area Advisory Committee to advise the Secretary of the Interior on the development and implementation of such a plan. There will be full opportunity for public participation and comment, and the Secretary may enter into cooperative agreements with State and local agencies like the Arizona Game and Fish Department, Arizona State Parks, and other special interested parties who may assist in the preservation of the area.

Mr. Chairman, this is a very special area. It is also a very fragile environment. We should protect this area's riparian ecosystem while allowing the public to enjoy its scientific, cultural, and recreational resources. Though the House-passed bill is different from the version my colleague, Senator DeConcini, and I introduced, I have no problem with the final provisions of H.R. 4811. I would hope that the committee would move expeditiously on this legislation because, quite simply, we don't have much time left in the Session and all of the Members of the Arizona Congressional Delegation support the legislation. Thank you.

STATEMENT OF THE
HONORABLE MORRIS K. UDALL
REGARDING H.R. 4811
THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

Mr. Chairman, I want to thank your Committee for taking the time today to consider legislation to designate the San Pedro Riparian National Conservation Area in Arizona. As you know, the House already has passed an amended version of the bill before you and I am very pleased to be in complete support of this legislation.

The lands covered by the bill are 43,000 acres of private lands that were acquired by the BLM in a major land exchange earlier this year. The lands are located in Cochise County, Arizona, which I had the pleasure of representing here in Congress for many years. All the lands in question lie in a narrow strip along about 30 miles of the San Pedro River that runs north from the Mexican border. Arizonans, as well as federal officials, have been interested in protecting these special lands for many years.

The riparian area still retains about 75% of its native flora which is very unusual for a river in the Southwest. The nearby Gila, for example, has retained only about 10% and the Pecos about 15%. It is habitat for at least 20 species of raptors, a third of the entire U.S. population of gray hawks, and a total of about 210 species of birds. The diversity of mammals is considered the greatest of any area of comparable size in the country. The water that attracts wildlife also has attracted man for thousands of years so the area is rich in archaeological sites from early man, through 20th century Indians and Spanish settlers. The public recreation possibilities are outstanding.

The bill designates the area a "national conservation area." There are no real standards for what makes a national conservation area and we have approached the construction of this particular designation very carefully. Although we in the House generally frown on such designations because they are not well defined, we also recognize that none of the alternatives available to us are very conducive to this unusual area. Rather than force an incompatible management scheme on the San Pedro we concluded that we would be better of crafting one that is custom tailored to the San Pedro.

The basic approach is to define the essential resources of the area -- wildlife, archaeologic, paleontologic, scientific, cultural, educational and recreational -- and instruct BLM to draft a management plan promoting activities that <u>further</u> the protection and development of these resources while discouraging or prohibiting all activities that do not.

BLM is given pretty wide latitude in this regard, but there are some significant exceptions. First, all mining is banned after two current contracts signed by the former private landholder expire. Second, all vehicles are banned except on roads designated for their use by the management plan.

And finally, grazing is banned for at least 15 years. Like

all too much of the lands in the Southwest, and especially its riparian lands, this area has been overgrazed. Our purpose in banning grazing, however, is not to make an anti-grazing statement or set any anti-grazing precedents. Rather, it is an effort to create a riparian zone that has not been grazed by livestock, to study its ecosystem and provide a benchmark by which we can judge other riparian areas that may be characterized by good, bad or indifferent grazing management practices.

The ban against livestock grazing expires in 15 years so BLM can be given an opportunity to reevaluate this approach at that time. I want to emphasize that the fact that the ban sunsets in 15 years should in no way be interpreted as Congressional intent to resume grazing after 15 years. It is my strong belief that grazing should be re-introduced only if the land managers believe it is necessary to do so for the ecological health of the riparian area and only then in such limited areas and for such limited time as they think is necessary. I am very excited by the prospect that this riparian area of the Southwest will be allowed to develop without the imprint of livestock grazing because I think it has the potential to further by a long mile our understanding of the natural workings of desert riparian ecosystems. I strongly urge the Committee to retain this provision.

There are essentially three current commercial activities in the area. All of them are operating under contracts with the former private landowner. These contracts all expire at the end of this year or the next. BLM intends to move all three of them -- a grazing operation, a sand and gravel mine and a "slumpblock" operation -- out of the area when their contracts expire and we fully support that intention.

Mr. Chairman, we have had excellent bipartisan cooperation and support from the very beginning of the effort to conserve the San Pedro. I want to offer a special note of appreciation to Dean Bibles, the Arizona state director of BLM, for making the acquisition and protection of this area a personal priority and for meeting this challenge with great skill and dedication. I also would like to thank the rest of the Arizona Congressional delegation for their help and to offer my congratulations to those many private citizens in southern Arizona who have worked so hard for this day for many years.

Finally, Mr. Chairman, I would like to thank you and your Committee for holding this hearing today and for giving me the opportunity to testify.

Senator WALLOP. Senator Hawkins, I see, has arrived.

We are all but finished with Members. Senator Hawkins, we would appreciate and welcome your testimony on the Big Cypress National Preserve.

STATEMENT OF HON. PAULA HAWKINS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HAWKINS. Thank you, Mr. Chairman. Thank you for having this hearing. I am pleased to testify in support of S. 2029, a bill which would expand the Big Cypress National Preserve in south Florida by 128,000 acres.

Inclusion of this additional land into the Preserve would provide necessary protection to some of Florida's most valuable resources. Big Cypress provides vital drinking water supplies for several southwest Florida cities. It shelters a wide variety of rare species, it contributes nutrients and fresh water to the Everglades System, which as you and I have discussed has been recognized by the United Nations as playing a significant role in maintaining the health of our biosphere.

The legislation before us today is intended to expand the existing buffer around the Everglades and Big Cypress Preserve. The most valuable resource of this region is the water. It is even more valuable than the land, the trees, the wildlife, and the minerals. As fresh rainwater falls on northeast Florida, it moves slowly southward to Lake Okeechobee and then drains into the Big Cypress and then down into the Everglades National Park. The Big Cypress Preserve was established to protect this watershed from the constant threat of land development and speculation.

The natural flow of water from the north and central lakes into the Everglades should be bolstered by the construction of I-75 along Alligator Alley. The existing road has functioned as a dam to that waterflow. S. 2029 takes full advantage of the planned construction by authorizing the use of severance damage payments paid by the DOT to affected property owners as part of the overall purchase payment for the preserve addition.

This would account for approximately 47 percent of the total value of the land. The Department of Interior and the State of Florida will then be able to purchase the remaining interests in the land at substantially reduced costs.

As you are aware, and as Interior representatives will express today, the Department of Interior has indicated the value of these 128,000 acres does not merit Federal acquisition. I disagree with that assessment. It is vital that we ensure long-term protection for this additional acreage. Such protection is best achieved through Federal acquisition.

I have been working on another tract to initiate and promote a land exchange which would trade a 105-acre parcel of Bureau of Indian Affairs property in Phoenix, Arizona, for 145,000 acres of land in Florida. The Florida lands would then be incorporated into the Federal Park and Wildlife System.

The Department of Interior strongly supports this exchange, and negotiations are currently underway. To my distinguished col-

leagues from Arizona who berate this exchange as a sellout for swampland, I would like to clarify just what this "swamp 'is made up of. It houses an exotic mix of life: alligators bask amidst the mangrove forests and bright orchids while nearby saltwater crocodiles co-exist with white pelicans and pink flamingos and numerous other waterfowl. These are precious and delicate lands, and nowhere in the world can we find such a rare assortment of beauty, and they must be treated with great care.

As I stated, negotiations between Arizona and Florida interests are underway. While I remain cautiously optimistic—which is an expression I learned from the Chairman—an exchange agreement is not a guarantee. Therefore, it is important that we continue to push the legislation before us today quickly through the Senate. We do not have too many hours left. I urge my colleagues to support S. 2029 and work toward its passage.

I thank you again, Mr. Chairman, for the opportunity.

[The prepared statement of Senator Hawkins follows:]

Statement by Senator Paula Hawkins

Before the

Subcommittee on Public Lands, Reserved Water

and Resource Conservation

on

S. 2029

September 23, 1986

69-336 0 - 87 - 4

Mr. Chairman, I am pleased to testify in support of S. 2029, a bill which would expand the Big Cypress National Preserve in South Florida by 128,000 acres. Inclusion of this additional land into the Preserve would provide necessary protection to some of Florida's most valuable resources.

Big Cypress provides vital drinking water supplies for several southwest Florida cities. It shelters a wide variety of rare species. It contributes nutrients and freshwater to the Everglades system which, as you may know, has been recognized by the United Nations as playing a significant role in maintaining the health of our biosphere. The legislation before us today is intended to expand the existing buffer around the Everglades and Big Cypress Preserve.

The most valuable resource of this region is the water, even more than the land, the trees, the wildlife and the minerals. As fresh rainwater falls on Northeast Florida, it moves slowly southward to Lake Okeechobee and then drains into the Big Cypress and down into the Everglades National Park. The Big Cypress Preserve was established to protect this watershed from the constant threat of land development and speculation.

The natural flow of water from the north and central lakes into the Everglades should be bolstered by the construction of I-75 along Alligator Alley. The existing road has functioned as a dam to that waterflow. S. 2029 takes full advantage of the planned construction by authorizing the use of severance damage payments paid by the Department of Transportation to affected property owners as part of the overall purchase payment for the Preserve addition. This would account for approximately 47% of the total value of the land. The Department of Interior and the State of Florida will then be able to purchase the remaining interests in the land at substantially reduced costs.

As you are aware, and as Interior representatives will express today, the Department of Interior has indicated that the value of these 128,000 acres does not merit federal acquisition. I disagree with that assessment. It is vital that we ensure long-term protection for this additional acreage. Such protection is best achieved through federal acquisition. Therefore, I have been working on another track to initiate and promote a land exchange which would trade a 105-acre parcel of Bureau of Indian Affairs property in Phoenix, Arizona, for 145,000 acres of land in Florida. The Florida lands would then be incorporated into the Federal park and wildlife system. The Department of Interior strongly supports this exchange and negotiations are currently underway.

To my distinguished colleagues from Arizona who berate this exchange as a sell-out for swampland, I would like to clarify just what this "swamp" is made up of. It houses an exotic mix of life: alligators bask amidst the mangrove forests and bright orchids while nearby saltwater crocodiles co-exist with white pelicans and pink flamingos and numerous other waterfowl. These are precious and delicate lands -- nowhere else in the world can we find such a rare assortment of beauty. They must be treated with great care.

As I stated, negotiations between the Arizona and Florida interests are underway. While I remain cautiously optimistic, an exchange agreement is not a guarantee. Therefore, it is important that we continue to push the legislation before us today quickly through the Senate. I urge my colleagues to support S. 2029 and work toward its passage.

Thank you Mr. Chairman.

Senator WALLOP. Paula, thank you. As I said to your colleague, I hope that you are correct that we do not have many hours left. [Laughter.]

That completes the testimony of Members from both the House and the Senate.

Now we will turn to Assistant Secretary Bill Horn for his testimony on S. 2029 and H.R. 4090.

Good morning, Mr. Secretary.

STATEMENT OF WILLIAM P. HORN, ASSISTANT SECRETARY, FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. HORN. Mr. Chairman, thank you.

Mr. Chairman, my name is William Horn, Assistant Secretary of the Interior for Fish and Wildlife and Parks, and I am pleased to present our views on S. 2029. I would ask that the entire statement be entered in the record, and I will summarize.

Senator WALLOP. Of course it will be. Thank you.

Mr. HORN. Thank you.

As indicated, S. 2029 would add an additional 128,000 acres of mostly private land to the present Big Cypress National Preserve, and it would require the acquisition of lands which lie to the north and east of the present preserve unit through a joint Federal-State effort in connection with the planned construction of Interstate 75 through the tract of land proposed for acquisition.

The area that is at stake is the blue area on the upper right-hand side.

[A chart is shown.]

Mr. HORN. The bill would require the Department of the Interior to provide 80 percent of the costs of acquisition, and the State to provide 20 percent. Now we have seen varying estimates of the dollar costs of the acquisition contemplated by this legislation, and it is clear that the Department's share of the cost of acquisition would be substantial. Indeed, our preliminary estimates indicate that our costs would be in the range of $40 to $60 million for direct land purchase, and these funds would have to be provided by subsequent appropriation.

We wish to emphasize that the Department is quite concerned with protecting the resources of the Big Cypress and Greater Everglades area, and for this reason we have substantial efforts underway at present. One of these is acquisition of a new national wildlife refuge, approximately 15 miles west of the closest portion of the land covered by this bill for the benefit of the endangered Florida panther. That is the area in red on the upper left-hand side.

We are also very, very sympathetic with the intent of this bill. As I am sure the Committee is aware, and as Senator Hawkins just indicated, we are actively exploring the potential of acquiring some of the lands covered in this measure and other lands through exchange. Although no final decision has been made, and we are not yet ready to bring a concrete proposal to Congress, we are persuaded that this approach appears quite promising.

We also believe that our alternative may be better, not only because it does not require the use of appropriated funds thus avoid-

ing any direct cost to the Treasury and additional contribution to the deficit, but because it would bring more land and land of more environmental importance into Federal ownership. It gives us more bang for the buck, if you would.

Two privately owned corporations, Collier Enterprises and Barron Collier Corporation, own several hundred thousand acres in the vicinity of the Big Cypress Preserve and Everglades Park. We have reached conceptual agreement with them for a land exchange which would cover a majority of the land included in S. 2029, along with other lands of more immediate importance from a conservation standpoint.

Under the proposed exchange, the Collier interests would receive Federal lands in Arizona that are presently used for an Indian school and are valued at approximately $100 million. The Department would receive in return approximately 115,000 acres of land in south Florida valued at approximately $50 million, and a cash payment of $50 million to equalize the exchange.

The lands that the Department would receive in Florida would consist of the following parcels: 70,000 acres of land covered by this legislation in the blue area which would be added to the Big Cypress Preserve; 16,000 acres of land in the red area to the upper left to complete the creation of the proposed Florida Panther Wildlife Refuge; 20,000 acres of land to create a new Ten Thousand Islands National Wildlife Refuge, the red area in the lower left side; plus additional lands still under discussion running along the west side of the Big Cypress unit between the current Park boundary and Florida State Route 29.

All of these areas are depicted on this map and the map accompanying the statement. Our exchange alternative would result in a significant addition to both the Park and Refuge Systems both benefiting Florida and the Nation at no direct cost to the Federal taxpayer.

Furthermore, the exchange would result in $50 million in additional revenue to the Government which could be used for reduction of the national debt, for the benefit of tribes historically served by the present Phoenix school, furtherance of Department programs, other land acquisition objectives, or whatever combination of these or other purposes the Congress might direct.

We would intend to seek specific Congressional approval of the proposed exchange before any land would change hands, and we fully recognize that there must be support from the Indian Tribes and other interests in Arizona, as well as the interests in Florida, for the exchange to proceed and we are working actively in that direction.

The Department is committed to consultation with the Arizona Inter-Tribal Council and to ensuring that there is no adverse impact on the students served by the Phoenix Indian School.

In conclusion, Mr. Chairman, we would recommend that the Committee defer action on S. 2029 at this time so that we may have an opportunity to aggressively pursue this exchange proposal to try to accomplish these conservation objectives and yet save the impact on the Federal Treasury.

Thank you.

[The prepared statement of Mr. Horn follows:]

TESTIMONY OF WILLIAM P. HORN, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, REGARDING S. 2029, ESTABLISHMENT OF THE BIG CYPRESS NATIONAL PRESERVE ADDITION IN THE STATE OF FLORIDA.

Mr. Chairman, I am William P. Horn, Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior. I am pleased to present our views on S. 2029, to establish the Big Cypress National Preserve Addition in the State of Florida.

We oppose the enactment of this bill in its present form.

S. 2029 would amend the Act of October 11, 1974, which established the Big Cypress National Preserve in Florida, by adding an additional 128,000 acres of mostly private lands to the Preserve. This bill would add a substantial acreage to that already administered by the Federal Government in Florida.

This legislation requires acquisition of these lands, which lie to the north and east of the present borders, through a joint Federal-State effort in connection with the planned construction of Interstate Highway 75 through the tract of land proposed for acquisition. Existing law requires the payment of severance damages to landowners whose access to their property is damaged or eliminated as a result of constuction of the highway. We understand that the State of Florida estimates these severance damages will approximate half the value of the entire tract of land proposed for acquisition.

The bill would require the Department of the Interior to provide 80 percent of the costs of acquisition and the State to provide 20 percent. These costs would be reduced, however, by the amounts of payments, including severance damages, made to landowners within the proposed acquisition by either the Florida Department of Transportation or the Federal Highway Administration. Inasmuch as highway-related costs are by law allocated on a 90:10 Federal-State ratio, and given the State estimate of severance damages which equal half the value of the land in question, the breakdown of funding sources under S. 2029 would be: Highway Trust Fund, 45 percent; Department of the Interior, 40 percent; and the State of Florida, 15 percent.

The Department has seen varying estimates of the dollar costs of the acquisition proposed by this legislation, but none have been evaluated in detail. It is clear, however, that the Department's share of the cost of acquisition would be substantial. In fact, from these varying estimates I mentioned, it would appear that our costs would be at least $40 million for direct land purchase, plus significant additional amounts for administative and legal costs which accompany any such purchase.

We are, however, aware of the deep concerns in the State of Florida about conserving natural resources and ensuring that an adequate amount of water is available for growing coastal populations. To this end, we recognize that both the Big Cypress National Preserve and Everglades National Park fulfill an important function in preserving the natural sheet flow so vital to the continuing protection of the State's water resources.

We wish to emphasize that the Department is quite concerned with protecting the resources of the Big Cypress-Everglades area. For this reason, we have substantial efforts under way in the area at present. One of these is acquisition of a new National Wildlife Refuge, approximately 15 miles west of the closest portion of the land covered by this bill, for the benefit of the endangered Florida panther. This land is known to be the primary center of panther habitat outside of present State or Federal ownership. Legislation introduced by Senator Hawkins to define the boundaries of the refuge on a basis agreeable to the landowners and the Department has been reported by the Senate Environment and Public Works Committee, and we will be making an offer to the landowners for part of the land, using previously appropriated funds, in the immediate future.

We have also been working closely with the U.S. Army Corps of Engineers to restore the natural flow of water into Everglades National Park, and an ongoing experiment in this regard appears to be working well.

We are aware that the lands covered by this legislation would be a desirable addition to the Big Cypress National Preserve. However, a distinction must be drawn between desirable lands and critical lands. We cannot contend that the Big Cypress Addition is critical to the future of the Preserve, and that is why we have not sought additional appropriated funds to acquire it on our own initiative. That is also why we are not prepared to support the legislation.

We are sympathetic with the intent of the bill, which is to use the payment of the severance damages in connection with the construction of I-75 to reduce the price the Department would have to pay to add the remaining interests in the land to the

Preserve. However, as I am sure the Committee is aware, we are exploring the potential of acquiring some of these and other lands through exchange. Although no final decision has been made, this approach appears quite promising.

Our alternative may be better not only because it does not require the use of appropriated funds, thus avoiding any direct cost to the Treasury, but because it would bring more land, and land of more environmental importance, into federal ownership. It gives us "more bang for the buck", if you would.

Two privately owned corporations, Collier Enterprises and Barron Collier Corporation, own several hundred thousand acres in the vicinity of the Big Cypress Preserve and Everglades National Park. We have reached conceptual agreement with them for a land exchange which would cover a majority of the land included in S. 2029, along with other lands of more immediate importance from a conservation standpoint. I would like to point out, Mr. Chairman, that we have no formal contract with the Collier interests nor has this proposal received all of the necessary internal clearances.

Under the proposed exchange, the Collier interests would receive Federal lands in Arizona, that are presently used for an Indian school and are valued at approximately $100 million. The Department would receive in return approximately 115,000 acres of land in South Florida, valued at approximately $50 million, and a cash payment of $50 million to equalize the exchange.

The Florida lands would consist of 70,000 acres of the lands covered by this legislation, which would be added to the Big Cypress National Preserve;

16,000 acres of land to complete the creation of the proposed Florida Panther National Wildlife Refuge; 20,000 acres of land to create a new Ten Thousand Islands National Wildlife Refuge; plus additional lands still under discussion. All of these areas are depicted on the map accompanying my statement.

This would leave 57,000 acres of the land proposed for acquisition by S. 2029 in private ownership. It is our rough estimate that this land, after payment of severance damages, would be worth approximately $20 million. As I am sure you will hear shortly, the State of Florida has generously offered to help bear the cost of the acquisition and has already appropriated $20 million to that end.

We would therefore propose that the State utilize this money to acquire these remaining lands from their present owners, and subsequently transfer title to the Department for inclusion in the Preserve.

This would constitute a significant addition to both the Park and Refuge systems, benefitting both Florida and the nation, at no direct cost to the federal taxpayer. Furthermore, the exchange would result in $50 million in additional revenue to the government, which could be used for reduction of the national debt, for the benefit of the tribes historically served by the school, furtherance of Department programs, or whatever combination of these or other purposes the Congress might direct.

We plan to seek specific Congressional approval of the proposed exchange before any land would change hands. We fully recognize that there must be support from

Indian tribes and other interests in Arizona as well as Florida for the exchange to proceed and be approved, and both we and the Collier interests are working towards that.

We are also committed to consultation with the Arizona Inter-tribal Council and to ensuring that there is no adverse impact on the students served by the Phoenix Indian School. I can assure the Committee that the Department has no intention of taking action that would be detrimental to the Indian students.

The Administration realizes that there are no costless alternatives to direct purchase of private property although some may be less costly. Any means of acquisition must weigh the benefits to be derived against the potential effect on the Federal deficit.

Inasmuch as the funds which might result from a public sale of the Phoenix property, and indeed the possibility of such a sale, are speculative at best, we are persuaded that the exchange proposal represents a better opportunity for the taxpayers, and constitutes a far more valuable addition to the public estate from an environmental standpoint than S. 2029 or its companion House bill.

We would accordingly recommend that the Committee not pursue action on S. 2029 at this time, so that we might have an opportunity to more fully explore the possibilities and implications of this exchange.

Although a great deal has been said about the Big Cypress and Florida Panther areas, there has been little public discussion to date about Ten Thousand Islands, and I would like to submit for the record a brief summary of the fish and wildlife values of this area, constituting the remainder of my written statement.

This concludes my testimony, Mr. Chairman, and I would be pleased to answer any question you might have.

Ten Thousand Islands National Wildlife Refuge (proposed)

This area constitutes one of the last major relatively primitive island-estuary systems in the United States. It is a unique estuarine area both in its intricate configuration and its biological production. It is estimated that over 850 plant species are native to the area, more than are found in any comparably-sized area in the United States. Numerous endangered or threatened birds and animals reside here, including bald eagles, great white herons, manatees, woodstorks, green sea and loggerhead turtles, and indigo snakes.

There are also many species of wading and fish-eating birds.

The area is one of the most important breeding and rearing grounds for marine fish species. In 1976 the former Bureau of Commercial Fisheries estimated that at least 23 species of major importance in the Gulf on Mexico use the Ten Thousands Islands estuary. An example is the contribution the estuary makes to the production of pink shrimp, many of which are caught on trawling grounds long distances away. Over 1 1/2 million pounds of commercial shrimp originate here annually.

In addition, sport fishing thrives here, with species such as snook, tarpon and snapper, and constitutes a major economic activity in this part of Florida.

The islands themselves are largely covered with mangroves, although small beaches exist on many of the seaward islands. This area is physically located northwest of Everglades National Park, from the Park boundery to Cape Romano. It is subtropical in climate. The islands are barely above sea level, and the elevation inland rises less than one foot per mile.

This area has been under study by the Fish and Wildlife Service and its predecessor agencies for many years, but changing budgetary priorities have precluded any formal effort at acquisition until now.

Senator WALLOP. Bill, let me ask you what the status of those exchange negotiations are and what the reactions of the Indian Tribes are?

Mr. HORN. We have had discussions with the Tribal community and there has not been, within Arizona, what I would call a totally uniform reaction. Much interest is focused on what benefits might accrue to the Indian community as a result of the $50 million cash that would be generated in terms of replacement schools, funding for other types of important Indian affairs programs, so that there is interest there in seeing if all of the interests can be served by the exchange. I think at the same time there is interest within Arizona that changing this particular parcel of land to the private sector may make a major contribution to jobs and economic opportunities in the Phoenix area as opposed to leaving it in Federal hands.

So I think there is considerable interest. If we had a final proposal, we would be here with it, and we are not there yet.

Senator WALLOP. I am sympathetic with the goal of the Administration to get this exchange and $50 million, but what happens to the $47 million or whatever the figure was that the Department of Transportation will be required to make in severance payments?

Mr. HORN. My understanding is that incident to the construction of I-75 the severance payments would proceed and go ahead. My understanding is that the court and legal proceedings to identify the exact amount of severance damage and payments are underway. That gives us at least some additional time before the window closes.

Senator WALLOP. I guess my question is, while saving one do you lose the other?

Mr. HORN. Well, in our mind, I-75 is going to be constructed and is authorized regardless of what happens here with adding this land to Big Cypress, and therefore those severance damages will be paid regardless of what we do here in terms of land acquisition.

Senator WALLOP. Well, I understand that. I guess my question still is, do you lose the influence that that $47 million brings as has been testified to by Senator Hawkins and Senator Chiles.

Mr. HORN. Well, so far the land values reflected in our proposed exchange, the area in blue, the 70,000 acres that we presently estimate at around $26 million, that is the post-severance payment. Without the severance, that would cost us about $66 million to buy that land. Our estimate at this time of the severance payments is somewhere in the vicinity of $40 million, leaving us the residual interest to acquire at $26 million.

We think therefore we can take advantage of the severance arrangement to reduce the ultimate cost of acquisition.

Senator WALLOP. So it would be used for the same purpose under either set of management alternatives.

Mr. HORN. That's right. If we do not pursue the exchange and Congress sees fit, it would cost $26 million in appropriated funds to buy the 70,000 acre block under the present bill involving the lands owned by Collier. If on the other hand we did the exchange, that would count $26 million into the consideration flowing between the parties.

Senator WALLOP. Would that then save the State of Florida, too, if the exchange were pursued? What becomes their role?

Mr. HORN. We have estimated that the block of land covered in blue is about 128,000 acres. Some of that is presently owned by the State of Florida. We would acquire all of the Collier holdings to this exchange. That would leave somewhere in the vicinity of 50,000 acres remaining. We estimate that acquiring those 50,000 acres would cost about $20 million, which is the amount of money that the State of Florida has indicated it is prepared to contribute to this.

So we would hope that if we could acquire the Collier holdings plus the Panther and Ten Thousand Island area, that the State then could pick up the remaining lands in the area to the north and east of Big Cypress to make a 100 percent complete acquisition.

Senator WALLOP. Would that complete the needed protections in that area?

Mr. HORN. You would essentially then have the 2-million-acre Everglades National Park abutted by the 1.5- to 2-million-acre Big Cypress Preserve, abutted by the Florida Panther Refuge to the northwest, abutted by the Ten Thousand Islands Refuge. Then in between the Panther unit and the proposed Ten Thousand Islands area, you have the State's Fakahatchee Strand State Park plus Seminole State Park. That entire area then would be an enormous congregation of State and Federal Park and wildlife areas.

Senator WALLOP. So is it fair to say that your purpose is to add to the dimension that is contemplated in 2029?

Mr. HORN. Yes. We think that with the exchange we do a better job for the environment with less impact on the Treasury, and hence we are very interested in pursuing it very aggressively.

Senator WALLOP. Bill, thank you very much. We appreciate it.

Mr. HORN. Thank you, sir.

Senator WALLOP. The next witness is Deputy Assistant Secretary Doug MacCleery on H.R. 2921 and S. 2707 and H.R. 2826.

Good morning, Doug.

STATEMENT OF DOUGLAS W. MacCLEERY, DEPUTY ASSISTANT SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. MACCLEERY. Good morning, Mr. Chairman.

I much appreciate the opportunity to testify before the Committee on these three bills. I would like to first testify on the Wild and Scenic River designation.

Senator WALLOP. For some reason or other I am having a hard time hearing you. I have said it before. I think these microphones are state of the art, but the art of which they are the state is about 1970. [Laughter.]

Mr. MACCLEERY. Can you hear me now?

Senator WALLOP. That is better.

Mr. MACCLEERY. I will try to get a little closer here.

First I would like to testify on the Horsepasture River proposal, S. 2707 and H.R. 2826, which would designate 4.25 miles of the Horsepasture River in North Carolina as a component of the Na-

tional Wild and Scenic River System. I would like to summarize my statement and submit the statement for the record.

The Department does not object to enactment of these two bills. The Senate bill is identical to the House bill. In October 1984 this segment of the Horsepasture River was designated as a Study River under the National Wild and Scenic Rivers Act. Our draft study report and EIS are due to be released this spring. However, a preliminary study by the Forest Service, planning and action by the State, public input and land ownership patterns all support designation of the Horsepasture River.

After currently planned land acquisition——

Senator WALLOP. Excuse me. Can I have order in the back of the room, please? I am having a hard time hearing all of this. The din of conversation is just too much. Thank you.

Mr. MACCLEERY. After currently planned land acquisition is completed, the entire segment of the Horsepasture River as proposed for designation would flow through the National Forest System lands. Forest Service management of these lands would be compatible with either State or Federal River protection laws. Due to the extent of Federal ownership along the river, we believe that designation as a Federally managed component under section 3 of the Wild and Scenic Rivers Act is more appropriate than a State-managed component under section 2 of the Act.

The proposed Horsepasture Wild and Scenic River is a beautiful river that is characterized by five major waterfalls, numerous lesser falls, cascades, rapids, boulders, rock outcrops, and lush vegetation. Designation of this River has strong local support. The River has already been studied by the State, and our studies to date support its designation.

While we normally do not support designation before Congressionally required studies are completed, we do not object at this time to enactment of this bill.

That concludes my statement.

[The prepared statement of Mr. MacCleery on S. 2707 and H.R. 2826 follows:]

STATEMENT OF
DOUGLAS W. MACCLEERY
DEPUTY ASSISTANT SECRETARY
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands, Reserved Water and Resource Conservation
Committee on Energy and Natural Resources
United States Senate

On S. 2707 and H.R. 2826, bills "to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the National Wild and Scenic Rivers System."

September 23, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to have the opportunity to present the Department of Agriculture's views on S. 2707 and H.R. 2826, bills to designate approximately 4.25 miles of the Horsepasture River from Bohaynee Road downstream to Lake Jocassee in Transylvania County, North Carolina, as a component of the National Wild and Scenic Rivers System.

The Department of Agriculture does not object to the enactment of S. 2707 and H.R. 2826. The Senate bill is identical to the House act.

In October 1984, this segment of the Horsepasture River in the Nantahala National Forest was designated as a study river under the National Wild and Scenic Rivers Act. Preliminary study by the Forest Service, planning and action by the State of North Carolina, public input, and land ownership patterns all support designation of the Horsepasture River as a Wild and Scenic River.

The State of North Carolina enacted legislation in June 1985 designating the same segment of the Horsepasture River as a natural river in the North Carolina Natural and Scenic Rivers System. The North Carolina Department of Natural Resources and Community Development has prepared a management plan to protect the undeveloped scenic and recreational features of the river and its gorge. We have worked closely with that Department because of the National Forest System lands along this segment of the river. The State law also directed the Governor to seek inclusion of the Horsepasture River section in the National Wild and Scenic Rivers System under Section 2(a)(ii) of the National Wild and Scenic Rivers Act. This request has been made and is being reviewed by the Department of the Interior.

A major tract of land along the Horsepasture River, the Leder property, has been acquired by the Forest Service in accordance with our FY 86 Appropriation Act. We expect to complete a land exchange with Duke Power Company for the remaining non-Federal land along the river within a year. The entire segment of the Horsepasture River proposed for designation in S. 2707 and H.R. 2826 will then flow through National Forest System lands. Forest Service management of these lands would be compatible with either State or Federal river protection laws. Due to the extent of Federal ownership along the river, we believe that designation as a federally managed component under section 3 of the Wild and Scenic Rivers Act is more appropriate than as a State-managed component under section 2 of that Act.

The proposed Horsepasture Wild and Scenic River is a beautiful river that is characterized by five major waterfalls, numerous lesser falls, cascades, rapids, boulders, rock outcrops, and lush vegetation. Designation of this river has strong local support, the river has already been studied by the State, and our studies to date also support its designation. While we normally do not support the designation of Wild and Scenic Rivers before congressionally required studies are completed, we do not object to enactment of S. 2707 or H.R. 2826.

This concludes my comments. I would be happy to answer any questions the Committee might have.

Senator WALLOP. Doug, thank you.

Mr. MACCLEERY. I would now like to testify on H.R. 2921, which involves the use of rights-of-way on National Forest System lands by persons seeking to convey water for their use.

The Department has no objection to H.R. 2921 as passed by the House. However, we would strongly oppose enactment if the bill were to be broadened beyond its current scope.

Mr. Chairman, the last time the Department testified before this subcommittee on this issue was on June 28, 1984. I remember it because I was the Department witness and you presided over the hearing. At that time, we strongly opposed the legislation before the Committee, which was S. 2692 and H.R. 2982. We felt it went considerably beyond what was needed to address the legitimate concerns raised by irrigation water users.

You asked the Department at that time to work with the ranchers who were concerned about this issue and to try to work out a mutually acceptable solution. I am pleased to report that we have reached a mutually acceptable solution on H.R. 2921. For that reason, we feel that H.R. 2921 should be passed.

The scope of the Act is limited to irrigation and livestock watering. The bill as currently written represents a reasonable solution to the status of such water conveyance facilities on the Western National Forests. While we feel that a 1926 effective date is preferred over the 1976 date, we endorse the approach taken that limits the scope to agricultural irrigation and livestock purposes.

We would strongly object to broadening the Act to include other classes of users.

The purpose of H.R. 2921 is to resolve the status of certain water conveyance systems now in place on National Forest System lands. The legal status of these conveyances was placed in doubt when statutory authority permitting their operation was repealed by the Federal Land Policy and Management Act.

Further, some systems may not have a clear legal status and hence may be in trespass on the National Forest System lands. The attached historical background outlines the statutory authorities and administrative policies concerning the authorizing of water conveyance facilities.

The Act would allow persons who constructed water conveyance systems on National Forest System lands either under special use permit, or without authorization, after the establishment of the National Forest to obtain a free use easement. H.R. 2921 would also amend section 504 of FLPMA to provide for multi-year payments for rights-of-way.

Section 504 currently provides only for annual payments. We strongly endorse this change which would substantially reduce the costs of administering many rights-of-way across National Forest Stystem lands. Private individuals holding the rights-of-way are protected under this bill by retaining the option for annual payments when the annual fee is greater than $100.

While we maintain our view that the existing provisions of Title IV are probably adequate for water conveyance systems, we recognize that it is desirable to clarify the status of certain facilities.

Thus, we have no objection to enactment of this bill as passed by the House.

Again, we would strongly oppose broadening the bill.

Thank you, Mr. Chairman. I would be glad to answer any questions.

[The prepared statement of Mr. MacCleery on H.R. 2921 follows:]

STATEMENT OF
DOUGLAS W. MACCLEERY, DEPUTY ASSISTANT SECRETARY,
NATURAL RESOURCES AND ENVIRONMENT,
U.S. DEPARTMENT OF AGRICULTURE

Before The

Subcommittee on Public Lands, Reserved Water
and Resource Conservation
Committee on Energy and Natural Resources
United States Senate

Concerning H.R. 2921
(Water Conveyances)

September 23, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to join the Subcommittee's deliberations on H.R. 2921. This act involves the use of rights-of-way on National Forest System land by persons seeking to convey water for their use.

The Department of Agriculture has no objection to H.R. 2921 as passed by the House, but would strongly oppose enactment if any attempt is made to broaden the scope of this act.

H.R. 2921 seeks to resolve concerns, particularly the charging of fees, of certain holders of permits for water conveyance systems for agricultural irrigation and livestock watering purposes. This bill would amend Title V of Federal Land Policy and Management Act of 1976 (FLPMA) which deals with rights-of-way, to authorize the Secretary of Agriculture to issue permanent easements, without payment, for certain water systems traversing National Forest System land that were constructed and in operation before

October 21, 1976. These grants would be supplementary to grants previously made. Granting the easement would be contingent on the permittee meeting the conditions set forth in Section 1(b) of H.R. 2921. These conditions deal with timeliness of applications, continuity of use for irrigation or livestock watering, requirements for survey, existence of valid State water rights, and ultimate use off of Federal land.

The scope of this act is limited to agricultural irrigation and livestock watering. We believe that H.R. 2921 as currently written represents a reasonable solution to the status of such water conveyance facilities on the Western National Forests. While we feel that a 1926 effective date is highly preferred over the 1976 date, we endorse the approach taken that limits the scope to only agricultural irrigation and livestock purposes. We would strongly object to broadening the act to include other classes of users.

The purpose of H.R. 2921 is to resolve the status of certain water conveyance systems now in place on National Forest System lands. The legal status of these conveyances was placed in doubt when the statutory authority permitting their operation was repealed by FLPMA. Furthermore, some systems may not have a clear legal status and hence may be in trespass on National Forest System lands. The attached historical background outlines the statutory authorities and administrative policies concerning the authorizing of water conveyance facilities.

The act would allow persons who constructed water conveyance systems on National Forest lands either under a special use permit or without authorization after the establishment of the National Forests (thereby

subject to the provisions of the 1897 Act, the "Organic Administration Act," authorizing the Secretary of Agriculture to issue special use permits) to obtain a free permanent easement.

H.R. 2921 would also amend Section 504 of FLMPA to provide for multiyear payments for a right-of-way. Section 504 currently provides only for annual payments. We strongly support this change. It would substantially reduce the cost of administering many rights-of-way across National Forest System lands. Private individuals holding rights-of-way are protected by retaining the option for annual payments when the annual fee is greater than one hundred dollars.

We are concerned that H.R. 2921 contradicts FLPMA and related acts beginning in 1897 to the extent that these earlier authorities required payment of fair market value for the special use authorized. We would like to emphasize that we have no objection to recognizing existing water conveyance rights or easements which can be documented by the users. This bill provides for recognizing these earlier grants as well as providing an alternate means to continue uses that have uncertain legal authority. While we maintain our view that the existing provisions of Title V of FLPMA are adequate for water conveyance systems, we recognize that it is desirable to clarify the status of certain facilities. Thus, we have no objection to the enactment of H.R. 2921, as passed by the House.

That concludes my statement. I would be happy to respond to the Subcommittee's questions.

USDA
SUPPLEMENTARY STATEMENT

H.R. 2921

Background On The Granting Of Irrigation Water Conveyance Facilities

Prior to 1891, ditches could be constructed across the public domain without formal authorization. Initially, once constructed, ditches, flumes, etc., were accorded easement status by local custom. This custom was recognized in law by the Act of July 26, 1866, as amended (14 Stat. 254). This act assured that the needs of homesteaders and miners for access and water would be provided. The easements granted were in effect as long as the use continued. There was no control or management of the location of ditches and roads. Any homesteader or miner could build a road or a ditch anywhere on the public domain and establish an easement. Prior easements that were clearly established and perfected under the 1866 Act, as amended, would not be affected by H.R. 2921.

As western settlement grew, increasing conflicts occurred, and in 1891, the Irrigation and Drainage Act (16 U.S.C. 471; repealed by FPLMA) was passed. This Act did not extinguish rights acquired under the 1866 Act, but it did require that a formal easement be issued by the Secretary of the Interior for all subsequent construction of irrigation works across public lands. In response to concern about the uses being made of the remaining land in the public domain, Congress, in the Creative Act of March 3, 1891, authorized the establishment of Forest Reserves for the purpose of protecting watersheds and timber resources. In the Organic Administration Act of 1897 (30 Stat. 34, as amended; 16 U.S.C. 473-478, 479-482, 551), Congress provided direction as to how the Forest Reserves (later designated the National Forests) would be managed. This Act not only recognized and provided for the continuance of existing easements but also provided for egress and ingress by settlers residing within the boundaries of the National Forests to reach their homes and to utilize their property; use of water for domestic mining, milling, or irrigation purposes under State or Federal laws; protection from destruction by fire and insect and disease depredations; and rules and regulations to regulate occupancy and use of the National Forests.

Prior to 1976, the authority to charge a fee for the use of rights-of-way across National Forest land derived from rules and regulations promulgated under the 1897 Act for administering rights-of-way. The longstanding administrative policy implementing the 1897 Act, however, was to waive the fee requirement on the basis that the public derived a benefit from the irrigation system. Except for easements established under the 1866 and 1891 Acts, it is important to recognize that authority to charge for special use permits on forest reserves derived from the general authority to regulate rights-of-way as existed in statute from 1897.

Since passage of the 1897 Act, the Forest Service has managed new water uses through issuance of a special-use permit. Those uses in place and perfected under law prior to establishment of an individual National Forest, and which have been used continuously since establishment, have remained in effect. Unless there is a need to expand or otherwise modify these previously existing

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uses, they remain as an outstanding right over which the Forest Service exercises no control.

A fee system was inititated in 1971 in response to legislation and internal policy revisions that had occurred in preceding years. It was decided when implementing this policy to ease the impact on permittees by not initiating the fee until (1) a change in ownership occurred, or (2) there was a change in the use or facilities authorized.

Except for rights already outstanding, the Federal Land Policy and Management Act of 1976 (43 U.S.C.1701) repealed earlier statutes insofar as they pertain to rights-of-way across Federal lands. All future water transmission facilities approved by the Secretaries of Agriculture or the Interior must now be authorized in accordance with this new law. However, outstanding permits issued before passage of FLPMA were protected under grandfather provisions in the Act and are not required to be reissued (Section 509(a)). Only when a change occurs in ownership or in the facility itself or a permit expires of its own terms is a new permit conforming to FLPMA issued and a fee initiated.

Our current policies and procedures governing the issue of special-use authorizations and fee requirements are contained in regulations developed pursuant to FLPMA and issued June 6, 1980 (36 CFR 251.50 - 251.64). These are quite similar to the policies and procedures which had been in place since 1897. Fees are based on the fair market value of the use authorized. Our preferred method of determining the fee is generally by use of rental data for similar uses from the private market. Where this is not available, the fee is established by charging a percentage of the appraised fair market value of the National Forest System land containing the authorized use. We have historically charged 5 percent of the land value as the annual fee. Special-use permits generally provide for periodic review and adjustment of the annual fee to assure that the fee is appropriate to the value of the use.

We estimate that of the 8,240 special-use permits for all categories of water systems in the western States that adhere to the appropriation doctrine for establishing water rights, 5,240 are used for agricultural irrigation or livestock watering purposes and of these, 4,175 were established prior to 1976. Fees received in 1984 from the approximately 400 charge permits issued prior to 10/21/76 totalled approximately $14,200.

Senator WALLOP. Doug, I understand your strong opposition to broadening it now, but does that mean that as far as the Department of Agriculture, the Forest Service is concerned that all discussions are closed on future concepts that are related?

Mr. MACCLEERY. Not at all. We would be more than happy to discuss this——

Senator WALLOP. In the future?

Mr. MACCLEERY [continuing]. And look at other options on their own merits in the future.

Senator WALLOP. Well, I would urge that you do that. FLPMA was not the first issue that Congress acted on not knowing all the strings it was pulling. There are some inequities that remain outside the irrigation and stockwater issues that I think were unintended, and that just does not sit well with a democratic government. They are acts of taking that I do not think were intended. It is just a statement of arrogance—I do not mean yours, but ours as a Nation—that we continue in a posture merely because we were authorized, however unintentionally, to take it.

I would hope that we would continue those conversations with Congressman Strang and others.

Mr. MACCLEERY. We would be more than happy to continue these. With respect to this particular bill, we have worked very hard to work out the compromise.

Senator WALLOP. I understand that, and I appreciate that. I heard what Congressman Strang's counsel was, as well. This is what we asked you to do, and I appreciate that. It is a display of an agreeable relationship between Congress and the Administration which I hope continues. So we will respect that as far as this Subcommittee, at least, is concerned.

But I do urge you to continue those negotiations so that we can correct some other inequities which I am aware of and I think you are, as well.

Mr. MACCLEERY. We would be more than happy to discuss those and resolve them on their own merits.

Senator WALLOP. Thank you very much. I appreciate it.

Mr. MACCLEERY. Thank you.

Senator WALLOP. The next witness is Deputy Director Dave O'Neal from the Bureau of Land Management on S. 2442 and H.R. 4811.

Good morning, Mr. O'Neal. Welcome. I believe this is your first time in front of this committee, is it not?

Mr. O'NEAL. Yes, sir, it is.

Senator WALLOP. Thank you for coming.

STATEMENT OF DAVID C. O'NEAL, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. O'NEAL. Thank you.

I appreciate the opportunity to appear here today to support S. 2442 and H.R. 4811, similar bills that would establish the San Pedro Riparian National Conservation Area.

First of all I would like to thank the sponsor of this legislation, the Arizona Congressional Delegation, for their endorsement of

BLM management of this special area. I have a formal statement that I would like included in the record. Instead of presenting the entire statement, I would like to offer some brief comments on the specific provisions of the bill.

Senator WALLOP. By all means. Thank you.

Mr. O'NEAL. We strongly support enactment of S. 2442 or H.R. 4811, if amended as suggested. The area covered by both bills currently contains approximately 43,371 acres of land acquired by BLM in March of this year. The Senate bill provides that the area shall not encompass more than 60,000 acres. We support the approximately 43,000-acre limitation now included in H.R. 4811.

In addition, grazing is currently allowed in the area. Therefore, we do not favor the language of H.R. 4811 disallowing new grazing permits for a period of 15 years. We prefer that the Secretary be allowed the discretion to determine whether grazing should be continued. Both S. 2442 and H.R. 4811 would close the area to mining, mineral, or geothermal leasing. We agree that the area should be closed to mining, but suggest that both bills should be amended to provide that the Secretary of the Interior may lease the lands under the Mineral Lands Leasing Act and the Geothermal Steam Act, and also that they may dispose of mineral materials under the Mineral Materials Act of 1947.

We believe that these activities can be appropriately controlled through the land-use planning process. We also find the reporting provisions in both bills to be burdensome and unnecessary.

Finally, H.R. 4811 is very specific as to the makeup of the Advisory Committee. The term and number of members are specified. We believe such details could prove to be counterproductive and believe they are best left to the discretion of the Secretary. We prefer the Advisory Council provisions included in S. 2442.

The San Pedro area is a unique area with many outstanding and varied resource values. We believe it is appropriate that the area be managed by the Bureau of Land Management and are pleased with this Committee's interest in considering this legislation.

I will be pleased to answer any questions you might have.

[The prepared statement of Mr. O'Neal follows:]

SEP 23 '00

STATEMENT OF DAVID C. O'NEAL, DEPUTY DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION SUBCOMMITTEE, ENERGY AND NATURAL RESOURCES COMMITTEE, UNITED STATES SENATE ON S. 2442 AND H.R. 4811, A BILL AND AN ACT, RESPECTIVELY, TO ESTABLISH THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA IN COCHISE COUNTY, ARIZONA, IN ORDER TO ASSURE THE PROTECTION OF THE RIPARIAN, WILDLIFE, ARCHAEOLOGICAL, PALEONTOLOGICAL, SCIENTIFIC, CULTURAL, EDUCATIONAL, AND RECREATIONAL RESOURCES OF THE CONSERVATION AREA, AND FOR OTHER PURPOSES.

I appreciate the opportunity to appear here today to support S. 2442 and H.R. 4811, similar bills that would establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona.

Section 1 of S. 2442 would establish the San Pedro Riparian National Conservation Area. The Area would consist of Federal lands acquired by exchange or purchase, would be managed by the Secretary of the Interior through the Bureau of Land Management and could encompass not more than 60,000 acres. Section 1 of H.R. 4811 differs from S. 2442 in that it limits the area to approximately 43,000 acres.

Section 2 of S. 2442 would require the Secretary to manage the conservation area in accordance with its provisions and, where not inconsistent with S. 2442, the principles of the Federal Land Policy and Management Act of 1976. Management would be in a manner that conserves, protects, and enhances the riparian, wildlife, archeological, paleontological, scientific, cultural, educational and recreation resources of the conservation area. The Secretary could allow other uses if he could show that such uses would have no significant adverse effects on the primary purposes for which the conservation area is established.

The bill specifically provides that, notwithstanding any other provision of law, lands within the conservation area shall not be available for disposition, except through exchange to improve boundaries.

Similar management provisions are contained in section 2 of H.R. 4811. However, under H.R. 4811 the Secretary would not, subject to valid existing contractual rights, be allowed to issue any permit for the grazing of livestock on lands designated as part of the conservation area for a period of 15 years from the date of enactment of H.R. 4811. In addition, H.R. 4811 provides that, except where needed for administrative or emergency purposes, the use of motorized vehicles in the conservation area would be allowed only on roads specifically designated for such use.

Section 3(a) of S. 2442 would require the Secretary to develop a plan for the comprehensive and long-term management, development, and protection of the area. The plan would be required to be developed with full opportunity for public participation and comment and to contain provisions to assure protection of all the diverse values of the conservation area that I mentioned earlier.

Section 3(b) of S. 2442 provides that the plan shall generally provide for visitor use but that the Secretary may limit visitor use, close portions of the conservation area, or allow use by permit only, with appropriate conditions, in order to assure protection of the area's resources and values.

Under section 3(c), the Secretary would be allowed to authorize research projects on the various resources in the conservation area and to enter into cooperative agreements with appropriate State and local agencies or private organizations for the management of any portion of the area in accordance with the land use plans developed in accordance with the Act.

Section 3 of H.R. 4811 contains similar provisions for long-term management of the area. It would, however require the Secretary to develop recommendations to Congress on whether additional lands should be included in the conservation area. H.R. 4811 would provide for cooperative agreements with State and local agencies, but not private organizations, to better implement the management plan.

Section 4 of S. 2442 would require the Secretary to establish a Multiple Use Advisory Council to advise and to recommend to the Secretary appropriate management practices to implement the provisions of the land use plan and the purposes of the Act. In appointing members of the Council the Secretary would be required to include representatives from Cochise County.

Section 4 of H.R. 4811 provides for an advisory committee, with specific instructions as to its composition. The Secretary would appoint 7 members with terms of 3 years except that, of the members first appointed, 2 would be appointed for terms of 1 year and 3 would be appointed for terms of 2 years. Five members would be required to have recognized backgrounds in wildlife

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conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the primary purposes for which the conservation area was created. The sixth member would be selected from nominations submitted by the Governor of Arizona and the 7th member would be selected from nominations supplied by the Supervisors of Cochise County, Arizona.

Section 5 of S. 2442 contains general provisions:

- It withdraws the conservation area from all forms of appropriation including the mining, mineral leasing and geothermal leasing laws.

- It authorizes the Secretary to issue regulations to implement the Act.

- It establishes penalties for violations of the Act or of the regulations issued by the Secretary - a fine of up to $10,000 or imprisonment for up to 1 year, or both.

- It authorizes the Secretary to enter into cooperative agreements with State and local agencies for enforcement of the provisions of the Act and regulations issued pursuant to it.

- It states specifically that nothing in S. 2442 shall supersede or otherwise affect the Endangered Species Act of 1973.

- It establishes that nothing in the Act shall affect State or private inholdings within the conservation area, except that they may be acquired by exchange or purchase but not by condemnation.

Section 5 of H.R. 4811 would allow the Secretary to acquire lands as well as interests in lands within the boundaries of the conservation area by exchange, purchase or donation. Lands owned by the State or local government could be acquired by donation or exchange only. Any purchase or exchange of lands to be added to the conservation area would require the consent of the owner of those lands or rights. Section 2 of H.R. 4811 contains similar provisions covering withdrawal from the mining, mineral leasing and geothermal leasing laws, and enforcement. H.R. 4811 is silent on issuing regulations and on the Endangered Species Act of 1973.

Sections 6 of both S. 2442 and H.R. 4811 require the Secretary to report to Congress 5 years after the date of enactment, and every 10 years thereafter, on the condition of the resources of the area and the ability of the Bureau of Land Management to achieve the management goals specified in the Act.

Sections 7 of both S. 2442 and H.R. 4811 authorize the appropriation of such sums as may be necessary to carry out the provisions of the Act.

We strongly support enactment of either S. 2442 or H.R. 4811 if amended as suggested.

The area covered by both bills currently contains approximately 43,371 acres of land acquired by the Bureau of Land Management by deed dated March 6, 1986.

We support designation of the 43,371 acres as the San Pedro Riparian National Conservation Area. However, we see no reason for including in the bill the provision section 1(a)(3) of S. 2442 that the area shall encompass not more than 60,000 acres. We therefore favor the approximately 43,000 acre limitation in H.R. 4811.

The 43,371 acres are presently managed by the Bureau of Land Management for their many resource values under the broad mission given to the Bureau by the Federal Land Policy and Management Act of 1976 to manage lands under principles of multiple use. This means that appropriate attention is given to riparian values, wildlife habitat, soil, vegetation, watershed, historical and cultural resources, and recreational activities.

The area is about 30 miles long and 2 to 3 miles wide. It contains a high quality riparian ecosystem which BLM is managing for long-term wildlife benefit. It serves as a migration corridor for wildlife species moving in and out of Mexico.

The area contains a diverse wildlife population. Approximately 260 species of birds are thought to frequent the area, including about 20 raptor species. The most notable of these is the Gray Hawk. Big game species include mule and white-tailed deer and javelina. There are no known threatened or endangered species in the area.

Water resources include:

- o A permanent, artesian fed stream that is a tributary to the Gila River;
- o Wetland zones created by a major artesian system;
- o Surface and groundwater allocations which are currently under adjudication in the State Court; and
- o A flood plain substantially unaltered by major developments.

The San Pedro area affords many opportunities for a variety of developed and diverse recreation activities.

There are 122 known archeological sites within the area and numerous known sites adjacent to the area. There is a strong possibility there are many more. To name just a few of the known sites:

- o Murray Springs - the famous and highly significant Paleo Indian (Clovis) site that dates back 11,000 years.

- The first site excavated of the San Pedro stage of the Cochise culture, dating back 7,000 years, as well as numerous other Cochise sites and the more recent Hohokam sites that date from 1 A.D. to 1400 A.D.

- Sobaipuri (upper Piman) sites - Quiburi, Gaybanipitea and Boquillas. This is one of the few areas in the southwestern United States with known sites of the transition period between prehistoric and historic occupation of the Southwest.

- Several of these sites were visited by Father Kino between 1692 and 1698.

- The Presidio of Santa Cruz de Terrenate, a Spanish military post and chapel dating from 1776 to 1780. The ruins are of the best preserved presidio of that era in the United States.

- Routes of Coronado and other Spanish explorers who crossed the San Pedro property.

- Route of the Mexican War's Mormon Battalion and the site of the Battle of the Bulls.

- The Wells Fargo Stage Route and station sites.

- Several 19th century towns and mill sites including Fairbank, Contention, Lewis Springs, Charleston and Hereford.

In addition there are sites representing all stages of human occupation of the Southwest over a 11,000 year period. These provide a unique opportunity for interpretation.

There are also 9 known vertebrate fossil sites. At least 2 of these are highly significant sites. There are numerous additional sites adjacent to the area. These paleontological sites provide an excellent opportunity for scientific research and development.

Currently there is grazing in the area. We do not favor the language in section 2(c) of H.R. 4811 disallowing new grazing permits for a period of 15 years. If any moratorium is to be imposed, it should be for no more than 5 years. It would be preferable to allow the Secretary the discretion to determine whether grazing should be continued. The preparation of the management plan will provide the opportunity for complete and thorough consideration of the impacts of livestock grazing.

Both S. 2442 and H.R. 4811 would refine the principles under which the San Pedro Riparian National Conservation Area is managed. Both would continue multiple use management of the area by the Bureau of Land Management, identify the resource areas of most concern to the Congress, establish congressional direction for the management of the area and give the Secretary additional authority to enter into cooperative agreements for enforcement of the laws and regulations relating to the area. However, both S. 2442 and H.R. 4811 would

close the area to mining or mineral or geothermal leasing. We agree that the area should be closed to mining but suggest that both bills should be amended to provide that the Secretary of the Interior may lease the lands under the Mineral Lands Leasing Act and the Geothermal Steam Act, and also that he may dispose of mineral materials under the Materials Act of 1947. These activities can be appropriately controlled through the land use planning process.

We find the reporting provision in both S. 2442 and H.R. 4811 to be burdensome and unnecessary.

H.R. 4811 is very specific as to the makeup of the advisory committee. The terms and number of members are specified. We believe such details could prove to be burdensome and counterproductive. They are best left to the discretion of the Secretary. We prefer the provisions of S. 2442 for an advisory council.

The San Pedro area is a unique area with many outstanding and varied resource values. Both bills assign to the Bureau of Land Management the responsibility of protecting this unique and beautiful area in a manner that will enhance public appreciation of the significant natural resources along the San Pedro River. We believe it is appropriate that the area be managed by the Bureau of Land Management and appreciate the endorsement for BLM management extended by the sponsors of the legislation.

This concludes my prepared statement. I will be pleased to respond to questions.

Senator WALLOP. Mr. O'Neal, I do not think we have any questions. It is a nice moment in time when the Bureau comes down in total support of the concept embraced in the language without any recommended changes. As a consequence, I am afraid if I question anything I may break down that circumstance.

Thank you very much.

Mr. O'NEAL. Thank you, Mr. Chairman.

Senator WALLOP. Next is a panel on S. 2029 and H.R. 4090 consisting of Mr. Nat Reed, Hobe Sound; Mr. Bill Lienesch, Director of Federal Activities, National Parks and Conservation Association; Dr. Michael Duever of the National Audubon Society who is accompanied by Mr. Larry Thompson, Florida Regional Representative of that organization; and Mr. Steven Whitney of the Wilderness Society.

Good morning.

STATEMENT OF NATHANIEL P. REED, HOBE SOUND, FL

Mr. REED. Good morning, Mr. Chairman. How do you want me to proceed? I have edited my statement down to what I would think is around two minutes. Would you like me to proceed with that?

Senator WALLOP. Yes, if you would. The whole statement in each instance will be inserted in the record. I appreciate your understanding.

Mr. REED. Thank you, sir.

Mr. Chairman, my name is Nathaniel Reed. I have served four Florida Governors in a variety of positions. I am presently serving as a gubernatorial appointee on the board of the South Florida Water Management District, which is directly involved in land use, water quantity and quality issues that confront all the citizens of South Florida on a daily basis.

I served as Assistant Secretary of Interior for Fish, Wildlife, and Parks for both Presidents Nixon and Ford from 1971 through 1976, and I might add it is a great pleasure to be back in this room where I had so many fascinating hearings during that nearly six years, and it is very nice to see you again, Mr. Chairman.

One of my major assignments in 1971 was the production of the Big Cyprus Report, a major study of alternatives relating to the authorization of the present Big Cyprus Freshwater Preserve. Without this major addition to the National Parks System, the critical water supply to Everglades National Park would have been hopelessly jeopardized. The creation of Big Cyprus was a major initial step in the efforts to protect the Everglades water supply based on the best information available to us in the early 1970s.

We know today that the puzzle is much more complex, and additional pieces are necessary to safeguard the water flow. The Governor, the legislature, and the district have made many tough, pragmatic decisions. We have and are currently spending millions of State and local funds on research, land acquisition, and land and water management within the Everglades ecosystem.

The past three Governors have devoted massive amounts of time and energy in confronting these issues. Florida's Congressional delegation has been united and highly supportive. Congressman

Lewis, who I am very proud to have as my Congressman, has been a particularly effective leader in securing passage of House Bill H.R. 4090. Due to Congressman Lewis and our Senate colleagues and leadership, the State's Congressional leadership is united in support of this initiative.

I am here to add my support and that of the South Florida Water Management District for the passage of S. 2029.

Mr. Chairman, we face a situation here which is unique. I know of no other opportunity to acquire as many acres, 128,000 acres, at such value. Many of these same key ingredients which successfully produced the original passage of the Big Cyprus Preserve exist again today.

Both of the United States Senators from Florida support the bill with enthusiasm. I wish to thank Senator Hawkins for her continuing support, which has and will be invaluable if this bill is to become a reality. The offer by the present Governor of Florida, Governor Graham, to acquire approximately 8,000 acres with $20 million of State funds is as historic as Governor Askew's original contribution.

The effort to preserve the life waters of the Everglades has been an outstanding successful Federal-State partnership. This bill, this proposal represents an opportunity that fascinates and intrigues me. The reconstruction of Alligator Alley into an interstate road leading to the potential use of highway trust funds gives the Congress an opportunity to add substantially to the Big Cyprus Freshwater Preserve, those critical upstream unprotected watershed lands.

I do not even want to think about the years of endless battle that will ensue if these lands are not protected. At the headquarters of the South Florida Water Management District we are already receiving and reviewing a daily multitude of requests for land conversion in this essential watershed area. I recognize there are always reasons for not seizing an opportunity, in particular politics of conservation, fiscal constraints, and precedents.

Mr. Chairman, I urge you to seize this opportunity. There shall never be another opportunity such as this barring recreation to restore a vital element of the Everglades ecosystem. So many great deeds in our Nation's conservation history have been marked by dramatic steps taken in the last moments of a Congressional session. Mr. Chairman, I urge you and your colleagues to take a long, hard look at the House bill, which has had the benefit of review and many months of hard work.

I hope your final work product will closely track that of your House colleagues so that in the limited time available we may see this bill become law. Thank you for the opportunity and pleasure of appearing before you.

[The prepared statement of Mr. Reed follows:]

NATHANIEL PRYOR REED
Post Office Box 375
Hobe Sound, Florida 33455

TESTIMONY OF NATHANIEL P. REED

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS
COMMITTEE ON
ENERGY AND NATURAL RESOURCES

SEPTEMBER 23, 1986

Mr. Chairman, my name is Nathaniel P. Reed. I have served four Florida governors in a variety of positions. I am presently serving as a gubernatorial appointee on the Board of the South Florida Water Management District (SFWMD), which is directly involved in land use, water quantity and quality issues that confront all the citizens of south Florida on a daily basis.

I served as Assistant Secretary of the Interior for Fish, Wildlife and Parks for both Presidents Nixon and Ford from 1971 through 1976.

One of my major assignments in 1971 was the production of the Big Cypress report: a major study of alternatives relating to the authorization of the present Big Cypress Fresh Water Preserve.

Without this major addition to the National Park System, the critical water supply to Everglades National Park would have been hopelessly jeopardized. The creation of Big Cypress was a major initial step in the effort to protect the Everglades' water supply, based on the best information available to us in the early 1970s. Today we know the puzzle is more complex and additional pieces are necessary to safeguard the water flow.

The State of Florida is experiencing intensifying growth pains. In the Everglades ecosystem; from the top of the Kissimmee Lake, to Florida Bay, the strains and stresses of escalating population growth and land-use changes are in combination having a dramatic impact on our natural resources. There are

weeks when the state's decision-makers are confronted by pressures that at times seem insolvable.

Collectively we have made many tough pragmatic decisions. We have and are currently spending millions of state and local funds on research, land acquisition and land and water management within the Everglades ecosystem.

The past three governors have devoted massive amounts of time and energy in confronting these issues. Florida's congressional delegation has been united and highly supportive. Congressman Lewis, whom I am very proud to have as "my" congressman, has been a particularly effective leader in securing passage of House bill H.R. 4090. Due to Congressman Lewis and our Senate leadership, the state's congressional leadership is united in support of this initiative.

I am here to add my support and that of the South Florida Water Management District for the passage of S. 2029.

Mr. Chairman, we face a situation which is unique. I know of no other opportunity to acquire as many acres (128,000) at such a value.

I am sure the committee members and staff remember when Everglades National Park became part of the National Park System, its borders were inadequate and made no sense from a watershed standpoint. Just as the Everglades were jeopardized by faulty boundaries, the final Big Cypress bill suffered from similar political and ecological limitations.

In spite of Senator Chiles' enthusiastic support and the really remarkable efforts by Senator Henry Jackson, the upstream boundaries were clipped back. There were the usual political and financial considerations. However, given the times and the state of our knowledge, we -- in the Interior Department and on the state level -- were delighted in spite of the imperfect boundaries and even a bit surprised by the creation of the Big Cypress Preserve.

President Nixon gave the proposal his enthusiastic support. The historic offer by then Governor Askew to fund a major percentage of the land acquisition costs vitally assisted the final passage of the legislation.

Many of these same key ingredients, which successfully produced the original passage of the Big Cypress Preserve, exist again today. Both of Florida's United States senators support the bill with enthusiasm.

The House of Representatives, with bipartisan support, overwhelmingly passed H.R. 4090.

The offer by the present governor of Florida, Governor Graham, to acquire acreage with state funds is as historic as Governor Askew's original contribution. The effort to preserve the life waters of the Everglades has been an outstandingly successful federal/state partnership.

This bill -- this proposal -- represents an opportunity that fascinates and intrigues me. The reconstruction of Alligator Alley into an interstate road, leading to the potential use of highway trust funds, gives Congress an

opportunity to add substantially to the Big Cypress Fresh Water Preserve those critical upstream unprotected watershed lands. I do not even want to think about the years of endless battles that will ensue if these lands are not protected.

At the headquarters of the South Florida Water Management District, we are alredy receiving and reviewing a daily multitude of requests for land conversion in this essential watershed area. I recognize that there are always reasons for not seizing an opportunity; in particular, the conservation of politics, fiscal constraint and precedent. There will always be obstacles, but leadership, vision and purpose can overcome most major stumbling blocks.

Mr. Chairman -- members-- I urge you to seize this opportunity. There shall never be another opportunity such as this -- barring re-creation -- to restore a vital element to the Everglades ecosystem. Yes, you will have to tap the Highway Trust Fund. Yes, there is a time limit -- as the number of congressional working days are limited. Yes, it will set a precedent which will effect other interests. Time and your discipline will determine that answers to each of these opportunities.

So many great deeds in our nation's conservation history have been marked by dramatic steps. Take and seize this opportunity.

Thank you.

Senator WALLOP. Thank you, Nat. I appreciate your testimony. Mr. Lienesch.

STATEMENT OF WILLIAM C. LIENESCH, DIRECTOR OF FEDERAL ACTIVITIES, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. LIENESCH. Thank you, Mr. Chairman.

I am Bill Lienesch, the director of Federal activities with the National Parks and Conservation Assocation.

As noted in my statement, my organization has been working on issues in South Florida particularly related to the Everglades and Big Cyprus for over 50 years. As others have testified today and others behind me will, this is a very complex area, so that the benefits of adding land to Big Cyprus will have a direct beneficial impact on the Everglades National Park itself, and by adding lands it will also enhance other ongoing efforts in the whole South Florida area.

One of the areas that has already been discussed today as a potential addition is the Fakahatchee Strip area. We are definitely in support of adding this area to the legislation. This area is in the heart of Florida panther habitat, and by putting it into the bill it will preclude the ability to have commercial development along that strip, which could be very detrimental, but also add that a 1985 report by the Fish and Wildlife Service recommended that this area be added into the title.

There has also been some discussion today with regard to the issue of access. Now, we are in complete support of the provisions in Section 6 which encourage the Secretary of the Interior to be involved in the access questions not only just from access from the highway but also the rest areas and the like, and in addition the House added language that would limit the number of access points, which we are also in support of.

There has also been discussion today with regard to the issue of exchange. My organization has been very favorably impressed by using exchanges where that is possible. We recently had a conference, a two-day conference that many people attended, but we would agree with Senator Hawkins and the point that she made that exchanges are extremely difficult to conclude, and that is particularly true when the exchange involves interstate areas.

So, while we would certainly support language in the legislation that allows exchange to be part of this legislation, as almost any park legislation does, we certainly see that there could be great problems mandating that the only way to conclude this would be through exchange, so therefore we would not support limiting the acquisition ability to exchange only.

That covers the major points in my statement, Mr. Chairman. There are a few more in there. But basically we are very much in support of this legislation and all the amendments made in the House bill.

Thank you.

[The prepared statement of Mr. Lienesch follows:]

STATEMENT OF

WILLIAM C. LIENESCH
NATIONAL PARKS AND CONSERVATION ASSOCIATION

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER, AND RESOURCE CONSERVATION

SEPTEMBER 23, 1986

Mr. Chairman, and members of the Subcommittee, my name is William C. Lienesch, and I serve as Director of Federal Activities of the National Parks and Conservation Association (NPCA). NPCA is a private, nonprofit, membership organization that serves as an advocate for the purposes and values of the National Park System. We appreciate the opportunity to appear before this distinguished subcommittee today.

The history of NPCA involvement in the effort to protect the Everglades dates back to 1932. In that year, we contracted with Frederick Law Olmsted Jr. and naturalist William P. Wharton, to travel to Florida and conduct a thorough landscape analysis of the region. The intent of the study was to determine whether this unique natural system should be represented in the growing National Park System. Their enthusiastic report to our Board of Directors concluded that this spectacular area was in fact unique, visually and scientifically, and deserving of our complete support.

The Board accepted those recommendations and we've been fighting for the Everglades ever since. NPCA chaired the Everglades Coalition in the '70's that led the fight against the cross-florida barge canal, and for the creation of the Big Cypress National Preserve (BCNP). Most recently, we have served as coordinator of a reincarnated Everglades coalition of national environmental organizations all working for the protection of the ecosystem - from the initiative to restore the Kissimmee River and its wetland habitats in the north, to protecting water flow to Everglades National Park to the south.

All of the organizations involved in this effort have come to understand that this complex ecosystem is made up of many inextricably linked components. The lands being proposed for addition are one missing piece in the center of the Everglades ecosystem puzzle.

The 128,000 acres proposed for addition to the Big Cypress National Preserve in S.2029 contain a mosaic of plant communities and habitat types. This as yet wild landscape serves as vital sanctuary for a tremendous diversity of wildlife species, including some that are rare or threatened with extinction. The Florida panther is known to range into this area, and the rare Eastern Indigo Snake occupies habitat in the proposed addition.

The fundamental factor influencing the health and integrity of the Everglades ecosystem is water. When we are able to bring under public ownership critical environmental lands in south Florida, we protect the ability of that landscape to absorb rainfall and surface flow and to release it gradually at a quantity, rate, and timing that approximates natural conditions. The 128,000 acres in question, while adjacent to Big Cypress, are linked hydrologically to Everglades National Park as well. It is no secret that a substantial amount of work is ongoing to ensure natural water flows to this great National Park. The addition of these lands to the Big Cypress will serve to enhance the effectiveness of these efforts.

In short, we believe the resource data alone would justify the addition of this area to the Big Cypress National Preserve. However, these environmental factors, coupled with enhanced recreational opportunity, and protection of water supply for a growing south Florida population, amounts to an open-and-shut case in our opinion.

NPCA has a few concerns with specific provisions of S.2029. The first is acreage that should be included in this measure, known as the Fakahatchee Strip which is located along the western boundary of the existing Preserve, between State Road 29 and the present boundary. This area encompasses approximately 15,000 acres in the heart of Florida panther habitat. Inclusion of these lands in the Big Cypress is critical for proper management of the resource and of eliminate the threat of commercial development along the highway. These lands have been included in H.R. 4090.

It is worth noting that the U.S. Fish and Wildlife Service, in it's 1985 Environmental Assessment " Fakahatchee Strand: A Florida Panther Habitat Preservation proposal," called for the fee title acquisition of the Fakahatchee Strip for management by the National Park Service as a part of the Big Cypress National Preserve.

A second concern relates to specific language found in Section 4(a). This section specifies that the Secretary shall promulgate rules and regulations to manage and control various allowable activities in the Big Cypress National Preserve, including motorized vehicles, oil and gas exploration, and hunting, fishing and trapping. The language in S.2029 repeats verbatim the language in the BCNP enabling legislation, with one important exception. S.2029, adds after the words "hunting, fishing and trapping," the phrase "...which shall be promoted and encouraged." We strongly urge the committee to strike this phrase and to allow the same language which has guided management of the Big Cypress National Preserve for over a decade to apply to the Addition as well. Hunting and fishing are allowable activities in the Big Cypress National

Preserve today, subject to necessary regulation to protect the Preserve's resources in perpetuity. We favor management of the Addition under the same terms and conditions. The phrase ". . . which shall be promoted and encouraged" does not appear in H.R. 4090 as it passed the House. Extensive language related to this issue is included in the House report.

We would like to clarify for the record, that trapping is presently illegal in the Big Cypress National Preserve under Florida State game management law. Furthermore, the Florida Game and Freshwater Fish Commission informs us that trapping would likewise be illegal in the lands proposed for addition under S.2029. For this reasón, we question the perpetuation of trapping language in Section 4(b). Furthermore, trapping is primarily a commercial activity inconsistent with the purposes of the National Park System.

Finally, we would like to commend Senator Chiles for including a section (Section 6) in S.2029 requiring cooperation among agencies, specifically including the Secretary of Interior. As the Subcommittee may know, there is need to determine the appropriate number, design and location, of rest areas and points of access into the Big Cypress National Preserve along the Interstate 75 corridor. NPCA supports the involvement of the Secretary in this decision process. We believe that these decisions must be based, first and foremost, on natural resource data. The Secretary is in an excellent position to bring this natural resource data to the table. This information can then be used to determine the appropriate number of, and suitable locations for, access points, rest areas, and other highway-related features. This data should also be used in the design process for these features to ensure that the actual design includes necessary measures to mitigate any adverse environmental impacts associated with their construction.

In summary, NPCA urges this committee to act favorably on S.2029. In so doing, we would urge consideration of adding the acreage in the Fakahatchee Strip along the west side of the existing preserve as well. We believe management of the Addition should be accomplished under the same rules and conditions as govern management of the existing Big Cypress, and therefore we oppose the "promote and encourage" language in Section 4(a). Finally, we support the involvement of the Secretary of Interior in the process of determining the appropriate number, location, and design of recreational and mineral access features along the Interstate 75 corridor. These determinations must be primarily based on the ability of the resource to support the use. The Secretary can play an important role in the decision process by making necessary resource data available to all of the participating agencies.

Mr. Chairman, this concludes NPCA's prepared statement. I will be happy to answer any questions you may have. Thank you.

Senator WALLOP. Thank you.
Dr. Duever.

STATEMENT OF DR. MICHAEL J. DUEVER, DIRECTOR, ECOSYSTEM RESEARCH UNIT, NATIONAL AUDUBON SOCIETY, ACCOMPANIED BY LARRY THOMPSON, FLORIDA REGIONAL REPRESENTATIVE

Dr. DUEVER. Mr. Chairman, I am Dr. Michael Duever. On behalf of the National Audubon Society's over 550,000 members nationwide, and national and Florida Audubon's joint 30,000 members in Florida, I would like to thank you for the opportunity to appear before you today in support of the bill to establish the Big Cypress addition as part of the Big Cypress National Preserve.

My position with the National Audubon Society is Director of the Ecosystem Research Unit. Since 1973 our work has concentrated on the management needs of wetlands in the southeastern United States. Of particular relevance to my testimony today is our extensive research in the Big Cypress Swamp. The area known as the Big Cypress addition, which is being considered for purchase by a combination of government agencies, is an important part of the overall south Florida Everglades-Big Cypress ecosystem.

Currently it is a relatively pristine area, and maintenance of this undisturbed condition is crucial to meeting the number of major State and Federal goals for restoring and preserving the Everglades and its unique plant and animal populations.

There are four particularly compelling reasons for acquiring this area:

One, the most important, is protection of water supplies to Everglades National Park and the Big Cypress National Preserve. This area is part of that watershed and it is one of the few that does not need to be restored. Acquisition of these lands will assure that they will be left intact hydrologically.

Two, virtually all the lands under consideration are wetlands, which are inappropriate for any uses other than those already permitted within the existing Big Cypress National Preserve. The area under consideration is also part of the Big Cypress area of critical State concern which was established by the State of Florida in the early 1970s. This designation was a statement about the portions of the Big Cypress Swamp which constituted an important and logical unit and which should be protected from all inappropriate development, particularly any that might significantly affect the area's water resources.

Three, a particularly significant characteristic of these lands is their isolation. Not only is this isolation a unique feature in itself within south Florida, but is the main reason the endangered Florida panther still occurs there.

And four, public ownership of this area will greatly facilitate effective management of the Big Cypress National Preserve.

The following statement is taken from the conclusions of our book, the Big Cypress National Preserve, which was originally published in 1979:

The most significant potential problems facing the Big Cypress National Preserve could be associated with future development along its northern border and along the corridor between the Preserve and the Fakahatchee Strand.

For these reasons, Audubon strongly urges the acquisition of the Big Cypress addition and the Fakahatchee strip and their incorporation into the Big Cypress National Preserve.

Thank you.

[The prepared statement of Dr. Duever follows:]

TESTIMONY OF DR. MICHAEL J. DUEVER

DIRECTOR, ECOSYSTEM RESEARCH UNIT

NATIONAL AUDUBON SOCIETY

S. 2029 - BILL TO EXPAND THE BIG CYPRESS NATIONAL PRESERVE

SUBMITTED TO THE

SUBCOMMITTEE ON
PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION

COMMITTEE ON ENERGY AND NATURAL RESOURCES

U. S. SENATE

SEPTEMBER 23, 1986

Mr. Chairman.

I am Dr. Michael Duever. On behalf of National Audubon Society's over 550,000 members nationwide, and National and Florida Audubon's joint 30,000 members in Florida, I would like to thank you for the opportunity to appear before you today in support of the bill to establish the Big Cypress Addition as part of the Big Cypress National Preserve. Audubon has been actively involved in working to maintain the health of the South Florida Everglades - Big Cypress ecosystem and its wildlife populations for many years. And we appreciate the efforts by both the federal and state governments that have already done much to protect this unique area.

My position within the National Audubon Society is Director of the Ecosystem Research Unit, a branch of the society's Research Department. The main goal of the Ecosystem Research Unit is to contribute to the improved management of natural areas by supplying the information managers need to make appropriate decisions. Since 1973, our efforts have concentrated primarily on wetlands in the southeastern United States, and have included studies of not only Audubon sanctuaries, but also national parks and refuges, state parks and preserves, and private lands such as those owned by The Nature Conservancy and Florida Power and Light. Of particular relevance to my testimony today is that over the past 13 years we have conducted a wide variety of ecological studies in the Big Cypress Swamp, and for this reason were selected by the National Park Service in 1977 to conduct the

Resource Inventory and Analysis for the then newly created Big Cypress National Preserve.

The area known as the Big Cypress Addition, which is being considered here today for purchase by a combination of governmental agencies, is an important part of the overall South Florida Everglades - Big Cypress ecosystem. Currently it is a relatively pristine area, and maintenance of this undisturbed condition is crucial to meeting a number of the major state and federal goals for restoring and preserving the Everglades and its unique plant and animal populations. There are four particularly compelling reasons for acquiring this area.

1) The most important aspect of the lands under consideration is protection of water supplies to Everglades National Park and the Big Cypress National Preserve. Currently there is a tremendous amount of effort going into restoring natural water flows to Everglades National Park. This area is part of that watershed, and therefore is one of the sources of water for the Everglades system. With the exception of the already planned improvements in the distribution of water flows across Alligator Alley, it is one of the few areas that currently does not have to be restored! Acquisition of these lands will help to assure that the area will be left intact hydrologically.

In previous discussions, the question has come up as to whether this area is really likely to develop if not brought into public ownership in the near future. In short, there is no

question that these lands will eventually be developed if left in private hands. The typical pattern of development in South Florida has been for agriculture to move into an area first, and then be followed by residential development. This pattern characterizes what has happened along the southeast coast of Florida, and is now happening along the southwest coast. While there are many good regulations on the books which control development in wetlands, few of these constrain agriculture. Once an area has been converted to agriculture, it is no longer recognized as a wetland or is considered to be too degraded to be worth protecting. Over the past 30 years there have been too many places in South Florida where it has been said "These lands are too remote or are uninhabitable, they will never be developed." We can now see that we have been sadly mistaken.

2) Virtually all of the lands under consideration are wetlands which are inappropriate for any uses other than those currently permitted within the existing Big Cypress National Preserve. This area is included in the Big Cypress Area of Critical State Concern which was established by the state of Florida in the early 1970's. This designation was a statement about the portions of the Big Cypress Swamp which constituted an important and logical unit which should be protected from all inappropriate development, particularly any that might significantly affect the area's water resources. Purchase of the area would help to assure the protection of these valuable resources.

3) One of the extremely important attributes of the lands under consideration is their isolation. Not only is this isolation a unique feature in itself within South Florida, it is the main reason the endangered Florida Panther still occurs there. Use of this area is limited by the lack of access points along public roads and by the difficulty of negotiating the terrain because of "boggy" soils and the density of trees in the extensive swamp forests. If the uniqueness of this area as well as the panther are to be protected, the maintenance of only limited access and the undeveloped character of this land must be maintained. The Big Cypress Addition occupies a central location in the range of the panther. Large predators require extensive contiguous areas within which to forage, 100-300 square miles in the case of the Florida Panther. Acquisition of this area would fill in a large gap in the publicly owned lands within the range of this unique animal, and would go a long way towards not only protecting a significant portion of its habitat, but in making the surrounding areas safer and more productive for panthers.

4) And lastly, public ownership of this area will facilitate effective management of the Big Cypress National Preserve. Much of the proposed new boundary will adjoin the Seminole and Miccosukee Indian Reservations, and thereby reduce the current extensive boundaries with private landowners. These boundaries now lie in the middle of remote areas where it is impossible to effectively control intrusions from the adjacent private land. The new boundaries should greatly simplify protecting the preserve from illegal activities, 1) by allowing control of access from

Alligator Alley and 2) due to existing limitations on movement by non-indians across reservation lands. The new boundaries would also facilitate necessary prescribed burning and exotic control programs. Coordination of these programs in South Florida has traditionally been much better between the various governmental agencies than between governmental agencies and the multitudinous landowners that frequently border public lands.

The following statement is taken directly from our book The Big Cypress National Preserve, of which I am the senior author. It is not an isolated statement in the body of the publication, but a part of one of the concluding chapters which followed an extensive review of the area's natural resources and man's activities there.

"At present, activities on lands adjacent to the BCNP appear to be having minimal adverse effect on the preserve. The most significant potential problems could be associated with future development along the northern border of the BCNP and along the corridor between the preserve and the Fakahatchee Strand." The corridor between the preserve and Fakahatchee Strand is the area currently referred to as "the Fakahatchee Strip".

For these reasons, Audubon strongly urges the acquisition of the Big Cypress Addition and the Fakahatchee Strip, and their incorporation into the Big Cypress National Preserve to assure their undisturbed character for the indefinite future.

Senator WALLOP. Thank you, Dr. Duever.
Mr. Whitney.

STATEMENT OF STEVEN C. WHITNEY, DIRECTOR, NATIONAL PARKS PROGRAM, THE WILDERNESS SOCIETY

Mr. WHITNEY. Mr. Chairman, thank you.

My name is Steve Whitney and I am Director of the National Parks Program at the Wilderness Society. I also serve as Coordinator of the Everglades Coalition, a coalition of national and State environmental organizations that includes my colleagues from National Audubon and NPCA with me today, and nine other organizations that are listed in my written statement.

Now this coalition has come together to work in a coordinated way for the protection of the Florida Everglades System. I am pleased to have the opportunity to testify today.

At the outset we would like to thank this Committee for agreeing to consider the merits of the bill. We would also like to thank the entire Florida Congressional delegation for supporting the measure. We remain optimistic even at this late hour that this meritorious bill will pass the Senate, and we are particularly optimistic in light of the strong statements of support from the Senators from Florida this morning.

Mr. Chairman, the 128,000 acres proposed for addition to the Big Cypress under the provisions of S. 2029 are situated literally in the heart of the Everglades System. These lands serve as an important habitat for many species of wildlife, game and nongame, endangered and abundant. They harbor alligators and black bear, deer and bald eagles, Indigo snakes and Everglades kites, herons, flamingos and the vanishing Florida panther.

They have the potential to play an important role in providing for recreational opportunity for a growing south Florida population. Perhaps most importantly the addition of these critical environmental lands to the Big Cypress will preserve their role in protecting the natural water regime of the Everglades System that is so important ecologically and economically to south Florida.

The measure before you proposes to take advantage of Federal highway dollars already allocated to the I-75 project for payment of access severance damages. These damage payments which will be expended in any event total nearly one-half the cost of acquiring the affected lands outright. The remaining balance of the purchase cost will be subject to an 80 percent-20 percent Federal-State acquisition program.

We believe the resource values of the affected lands in combination with this innovative acquisition approach presents an opportunity which simply should not be missed. That is, the opportunity for this important boundary expansion to be accomplished at a modest additional cost to the Federal Government.

While supporting expansion of the Big Cypress, we urge the Subcommittee to make several significant changes to the bill which we feel are important and which will make the measure match the House-passed version.

First, we recommend an additional boundary adjustment to the west of the existing Preserve. We were encouraged this morning to see Mr. Horn laud the attributes of this area along the west side. The addition of this 10,000 acre strip will serve to enhance the prospects of survival of the Florida panther on this planet and will facilitate recreational access, and will provide for effective and efficient management of the western boundary of the preserve by the National Park Service.

Secondly, we strongly recommend that section 4(a) of the bill be amended to delete the words "which shall be promoted and encouraged" in reference to hunting, fishing, and trapping. We acknowledge that in the original Big Cypress legislation Congress expressly permitted these activities in the preserve, and we are not asking the Congress to change that language.

We do not oppose hunting and fishing in the preserve. We simply do not think the Congress ought to direct the Park Service to promote and encourage those activities over other important values in the preserve.

Finally, section 6 of S. 2029 addresses the access question off of I-75. We would just like to point out to the Committee that there has been a lengthy State and Federal process that has been concluded that came to the conclusion that up to three access points for recreation are appropriate off the I-75 corridor.

During consideration of the companion bill in the House the measure was amended to incorporate this information, and we urge the Senate to consider doing the same.

With these amendments we strongly support passage of the bill, and we are, as always, prepared to assist the Committee in any way to facilitate its passage.

Thank you.

[The prepared statement of Mr. Whitney follows:]

THE WILDERNESS SOCIETY

TESTIMONY OF STEVEN C. WHITNEY, DIRECTOR, NATIONAL PARKS PROGRAM, THE WILDERNESS SOCIETY, BEFORE THE SENATE PUBLIC LANDS SUBCOMMITTEE, ON S.2029, THE "BIG CYPRESS NATIONAL PRESERVE ADDITION ACT.", SEPTEMBER 23, 1986.

Mr. Chairman and members of the Subcommittee, I am Steven C. Whitney, Director, National Parks Program for the The Wilderness Society. The Wilderness Society is a non-profit, membership organization dedicated to the wise management and protection of the federal public lands.

I also serve as coordinator of the Everglades Coalition, a coalition of national and state environmental organizations that have come together to work in a coordinated way for the protection of the Florida Everglades system. I am pleased to have this opportunity to testify on the bill S. 2029, to expand the boundaries of the Big Cypress National Preserve in Florida.

The following organizations, all of whom are members of the Everglades coalition, join us in making this statement:

Sierra Club
American Rivers Conservation Council
Florida Audubon Society
Trust for Public Land
Friends of the Everglades
Save the Florida Panther
Defenders of Wildlife
Florida Defenders of the Environment
International Wildlife Coalition

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Our statement today expresses strong support for S. 2029, while raising concerns with several provisions.

At the outset, we would like to thank this Committee for agreeing to consider the merits of S. 2029. We would also like to thank the entire Florida congressional delegation for supporting the measure, and especially would like to acknowledge the substantial efforts of Senators Chiles and Hawkins in developing the legislation and in supporting it's passage. While we realize it is late in the session, we remain optimistic that this meritorious bill will pass the Senate. We are counting on continuing strong support from the distinguished Senators from Florida in this regard.

Mr. Chairman, the vast expanse of land and water known as the Everglades is a truly unique ecosystem supporting a tremendous diversity of plant and wildlife species. This subtropical natural system originates far to the north of the Big Cypress National Preserve and Everglades National Park. The waters upon which these important National Park System units depend, flow slowly down the Kissimmee River basin, through Lake Okeechobee, into the State water conservation areas and through privately held agricultural lands before reaching the area of concern today.

Unfortunately, while enroute, these waters are diked, ditched, diverted, drained, contaminated, pumped and consumed at every turn, gravely and fundamentally threatening the natural values of this unique system. Efforts to preserve and restore the integrity of the Everglades ecosystem must therefore focus

primarily on bringing additional land and wetland acreage under public ownership and protection. The bill before you today provides a unique and timely opportunity to contribute immediately and substantially to those efforts.

The 128,000 acres proposed for addition to the Big Cypress National Preserve under the provisions of S. 2029 are situated literally in the heart of the Everglades system. These lands are ecologically and hydrologically linked to the existing Big Cypress Preserve, to the Fakahatchee State Preserve, and importantly, to Everglades National Park--a national treasure and one of only 8 sites in the world designated both a World Heritage Site and an International Biosphere Reserve.

These lands serve as important habitat for many species of wildlife--game and non-game, endangered and abundant. They harbor alligators and black bear, deer and bald eagles, Indigo snakes and Everglades kites, herons, flamingos and the vanishing Florida panther. They have the potential to play an important role in providing for recreational opportunity for a growing southern Florida population. Perhaps most importantly, the addition of these critical environmental lands to the Big Cypress will preserve their role in protecting the natural water regime of the Everglades system that is so important--ecologically and economically--to south Florida.

The measure before this Committee today proposes that the purchase of these lands would be accomplished with a unique combination of federal and state funds, on an 80%/20% basis, in

conjunction with the pending replacement of Alligator Alley (State Route 84) with Interstate Highway 75 across the Preserve.

Specifically, the proposal will take advantage of Federal Highway dollars already allocated to the I-75 project for payment of access severance damages. These damage payments, which will be expended in any event, total nearly one-half the cost of acquiring the affected lands outright. The remaining balance of the purchase cost would be subject to the Federal/State acquisition referenced above. We believe the resource values of the affected lands, in combination with this innovative acquisition approach, presents an opportunity which should not be missed. That is, the opportunity for this important boundary expansion to be accomplished at a modest additional cost to the federal government.

We would like to note for the Subcommittee our understanding that the National Park Service will be responsible for administering all land acquisition within the Addition other than that related to the actual highway construction. Such an arrangement is highly desirable in light of the excellent track record of the NPS land acquisition office in southern Florida. The NPS has the knowledge, experience and manpower in place to proceed immediately and efficiently with the acquisition program for the Addition. An amendment authorizing and directing the NPS to administer this acquisition program would serve to clarify this point.

While supporting the expansion of the Big Cypress, we urge this Subcommittee to make several significant changes to S. 2029.

First, we recommend an additional boundary adjustment to the west of the existing Preserve. This adjustment would include within the boundary a one-mile wide strip of land known as the Fakahatchee Strip. The Fakahatchee Strip is bounded on the east by the Big Cypress Preserve, on the west by State Route 29, on the north by Alligator Alley and on the south by the Tamiami Trail (SR 41). The lands to the west of SR 29 are protected lands managed by the State of Florida as the Fakahatchee Strand State Preserve.

This land which totals some 10,000 acres logically belongs in the Big Cypress. It is surrounded by protected lands and contains extremely important wildlife habitat. Florida panthers are known to occupy habitat in the Fakahatchee Strip. Furthermore, the addition of the Fakahatchee Strip will result in the boundary of the Preserve being coincident with the state highway rather than lying one mile back in the swamp. This will improve the ability of the National Park Service to administer the preserve and will facilitate recreational access. We also regard this as an essential addition to the Preserve because it would close off the opportunity for incompatible development that now exists in this strip of land sandwiched as it is between critical protected areas.

Secondly, we strongly recommend that Section 4(a) of the bill be amended to delete the words "which shall be promoted and encouraged" in reference to hunting, fishing, and trapping.

Section 4(a) of S. 2029 would amend the original Big Cypress Act by adding a new Section 10 (b)(5) containing this inappropriate "promote and encourage" language for application to the Addition.

We acknowledge that in the original Big Cypress legislation the Congress expressly permitted these activities in the Preserve, and we are not asking the Congress to change that language. We do not oppose hunting and fishing in the Preserve, provided that these activities do not result in unavoidable conflicts with other legitimate recreational uses of the Preserve, and provided that these activities do not adversely affect important natural resources or purposes of the NPS unit.

In short, we believe the lands to be added to the Big Cypress should be managed under the same terms and conditions as have guided management of the Preserve for the last 12 years. The NPS should not be asked to manage one portion of the Preserve with one set of rules and the remainder with another. For this reason it is critical that the Subcommittee amend Section 4 of S. 2029 to ensure that language regarding administration of the addition conforms to the language in the original legislation on this subject.

Section 6 of S. 2029, regarding the establishment of access from Interstate 75 within the Preserve, deserves some attention in our opinion. The bill appropriately instructs the Secretary to participate with the State in decisions regarding access to the Preserve. We support access for rest and recreation, appropriate wildlife protection, and where appropriate, hunting, fishing and frogging opportunities.

On the question of recreational access, however, we would like to point out that a lengthy Federal/State interagency process has already been completed which reached the conclusion that up to three recreational access points may be appropriate within the Preserve. During consideration of the companion bill in the House, the measure was amended to incorporate this information. We recommend the Senate consider doing the same.

In summary, The Wilderness Society, along with the aforementioned organizations, support the expansion of the Big Cypress National Preserve. The lands to be added are unquestionably critical to the overall Everglades ecosystem protection campaign.

We also believe that S. 2029 should be amended to provide for the addition of the Fakahatchee Strip to the west of the existing Preserve. The addition of this 10,000 acre strip will serve to enhance the prospects for survival of the Florida panther on this planet, will facilitate recreational access, and will provide for effective and efficient management of the western boundary of the Preserve by the National Park Service.

We urge that Section 4 of S. 2029 be amended to delete language requiring the NPS to "promote and encourage" hunting, fishing and trapping within the Addition. We do not oppose hunting and fishing in the Big Cypress, but we do not believe the NPS should be required to promote and encourage this activity. We strongly believe that the same language guiding administration of the original Preserve should apply to the Addition as well.

Finally, regarding recreational access, we encourage this Subcommittee to include language similar to that contained in the House passed companion bill which states that up to three recreational access points are appropriate in the Preserve. Such a change would acknowledge the lengthy Federal/State decision process which reached the same conclusion.

With these amendments, we strongly support passage of the bill S. 2029. We are prepared to assist the Committee in any way to facilitate passage of this important legislation.

Thank you.

Senator WALLOP. Thank you, Steve.

Let me just ask, nobody has mentioned the Ten Thousand Islands. Is that an area worth acquiring?

Mr. REED. There is active negotiation underway between the State and the owners of sections of land, the majority of the lands in the Big Cypress which are not subject to this bill but are probably going to be involved in the straight negotiation between those two entities, rather than anything to do with the Federal Government for addition to either the park or to a State preserve, aquatic preserve.

Senator WALLOP. So you think the State will take care of it?

Mr. REED. Everything is stable over there at the moment, and everything I think on that side is well under control

Senator WALLOP. Let me ask, does anybody have any objection to the exchange, if it works?

Mr. REED. No, Mr. Chairman, we have no objection. As Secretary Horn I think really graphically testified to, it has got some real politics and it has got some very, very difficult things to overcome in Arizona. It is doable, perhaps. I have no problem allowing it to track this bill, but I think the passage of this bill into law would give you a safety factor that you desperately need, frankly.

Mr. WHITNEY. Mr. Chairman, could I address that question? One thing I would like to point out is that the exchange, should the deal be put together, a difficult one at that, would not be foreclosed by the passage of this legislation. The implication was that if you pass this bill now we cannot do the exchange. Clearly that is not true.

Senator WALLOP. No, but let me tell you, because—Bill, you have heard me expound on this before—I am concerned, deeply concerned. I believe we are approaching a crisis time where a class action suit is going to be lodged against the Government of the United States for illegally and unconstitutionally taking private property.

We have done it in so many places by simply designating something as a national park or some other Federal reservation, and saying to people that own the property, we will buy it. Congress has a tremendous appetite for that, but it has less of an appetite for going through the more complicated part of paying for it. We even had to counsel one man to get a bulldozer and begin the work, because he is dying of cancer and nobody was interested in buying his property, and the only thing he could do was start to destroy it in order to get us into action.

So my concern is that every Congress, I keep saying this, and I keep capitulating, we add to this list of people from whom we have taken land and are not paying. What happens is, whether it is Chattahoochee, or Big Cypress, or some other place, the last one in goes to the top of the list, and the guys on the bottom of the list, well, they have been there for five years. They have grown used to it, and we will take care of these people that are not used to it yet. We have got it in the Indiana Dunes. We have got it in the Redwoods. We have got it in Channel Islands. We have got it all over the place.

What I am asking you is: In the passage of this, can we try to encourage that as the means of resolution? I have no problems. I am enthusiastic about the goal of the legislation, but I am less enthusiastic about authorizing something which I know Congress is not going to pay for, because I have watched us not pay for it.

Mr. REED. The difference here I think is the monies to pay for the land is not coming out of the Land and Water Conservation Fund. If it was, I would agree with you. It is coming out of the Highway Trust. It is there, and the money for the State's acquisition is in hand. We have the money in hand for the State's acquisition.

Senator WALLOP. Still, it is a relatively small portion. We are still going to have $50 million that is not highway money.

Mr. REED. That is true.

Senator WALLOP. Congress is just not doing those things. It concerns me, because I have the appetite for protection that others do, but I am having a bad dose of guilty conscience as this Nation seeks to add to its collection without in any way intending to pay for it.

Mr. LIENESCH. May I add two points to that, Mr. Chairman?

Senator WALLOP. Yes.

Mr. LIENESCH. One, with regard to this legislation, I may be wrong about this but I would think by passing this legislation and saying that exchange is possible and preferable from this Committee's standpoint, you are giving an impetus to the Administration. It is almost like competition where if you do not do the exchange, then the money is going to come to acquire it, so why do you not do the exchange and pull this off and show us you can do it. That would be one thing.

The other thing I would say is, since 1980 or thereabouts, and I just choose that as a round number, the amount of addition, and let us say after the Channel Islands addition because that was a fairly major addition, the amount of lands—if on one side of the ledger you take the lands being added to the Park System and other Federal systems, for that matter, but mainly the Park System, and on the other side you take even the limited amount of acquisition dollars, in that period of time you will find that the acquisition dollars exceed—and I could do the calculations and submit them to Congress—but I would imagine by a factor of two or three the amount of lands coming in, perhaps even with this, counting this and counting the bills now before the Committee.

So that the point that I would be making is that in the last five or six years, even with limited acquisition dollars, there has been some real progress made at least in the Park System and I think the other Federal systems as well.

Senator WALLOP. Yes, but it is not quite keeping up with the rate of increase in land values. We still have this bad problem of somewhere, depending on whose figure you want to use, around $4 billion worth of American property that we have frozen. They have merely the privilege of continuing to pay taxes on it. I am troubled by it.

I appreciate your statement earlier, Bill, on the exchanges. I am enthusiastic about them. Unfortunately, the National Wildlife Federation's suit has got them kind of buffaloed for the time being,

and until they show some willingness to sit down and settle some of that, we have got problems there, too. But that is another issue.

At any rate, I appreciate what you are saying. We will try to find some means of authorizing, and indeed stating a preference for the exchange.

I thank you all very much. We appreciate it.

Next, on H.R. 2921, is an old friend of mine, Mr. Larry Simpson, Northern Colorado Water Conservancy; Mr. John Carlson, Colorado Water Congress; Mr. Harold Miskel, City of Colorado Springs; Mr. Bernard Knott of Oak Creek; Mr. Ken Balcomb of Glenwood Springs; and Mr. Dennis Stolte, Assistant Director for National Affairs of the American Farm Bureau.

Good morning, Larry. Welcome.

STATEMENT OF LARRY D. SIMPSON, MANAGER, NORTHERN COLORADO WATER CONSERVANCY DISTRICT AND MUNICIPAL SUBDISTRICT

Mr. SIMPSON. Good morning.

Senator, it is a very great pleasure to meet with you once again to discuss matters of concern to the water resources of the Rocky Mountain States. We are here today to talk about H.R. 2921, and I am here to present a point of view regarding a large area of Colorado which is one of the predominantly largest irrigation areas within the State of Colorado.

Over history, and occurring right now, large irrigation companies, the largest in the State, have had their shares of stock traded on the open market. During annexations by municipalities and other situations, the ownership of some of those ditch companies, partial ownership of them, has been transferred to municipalities and other users, and by exchange and other efficient management methods of using the water, their waters have been used for multiple purposes.

So the effect of including the words "solely agricultural" in here does no benefit at all to all of these areas. As a matter of fact, if the Forest Service should consider this as a statement from Congress that excludes any further corrective action, it could work to the detriment of far more farmers and far more agricultural business people than it would correct problems for.

So this is our biggest concern. I have a written statement here that I will present into the record. Other than that, I would just like to summarize that the passage of this bill, if it is construed as being the final word from Congress, will do more detriment to a large part of the agriculture in the State of Colorado than it will help.

A statement from Congress which would, if they pursue this bill, include a determination that they will move ahead to further corrective action would be very desirable.

Thank you.

[The prepared statement of Mr. Simpson follows:]

BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION
HONORABLE MALCOLM WALLOP, CHAIRMAN

REGARDING H.R. 2921

TESTIMONY OF LARRY D. SIMPSON, MANAGER,
NORTHERN COLORADO WATER CONSERVANCY DISTRICT
AND MUNICIPAL SUBDISTRICT,
NORTHERN COLORADO WATER CONSERVANCY DISTRICT

SEPTEMBER 23, 1986

Mr. Chairman:

It is an honor to appear before you today. I am Larry Simpson, Manager of the Northern Colorado Water Conservancy District and Municipal Subdistrict, Northern Colorado Water Conservancy District.

The Northern District comprises the area of Colorado's front range from Boulder north to Fort Collins and then eastward down the South Platte River from Platteville to the Nebraska State line. A map of the Northern District is attached for your reference. The District provides an annual average of 240,000 acre feet of water to 750,000 acres of irrigated ground, 16 municipalities, and 25 water districts, as well as a number of large industries in northeastern Colorado. The District was established in 1937 and is the repayment entity for the Colorado-Big Thompson Project built by the Bureau of Reclamation.

The Municipal Subdistrict was formed in 1970 by the northern Colorado cities of Boulder, Longmont, Loveland, Greeley, Estes Park and Fort Collins for the purpose of bringing an additional 48,000 acre feet of water annually to northeastern

Colorado through the Colorado Big-Thompson System. The Windy Gap project was completed and dedicated in 1985 and was financed entirely through revenue bonds issued by the Subdistrict and backed by the project participants. The Windy Gap Project was developed with the aim of supplying additional municipal water from undeveloped sources rather than pursuing large scale conversion of agricultural water to municipal use. In this way, the cities believed that they could relieve pressure on farmers to sell their rights. The City of Fort Collins transferred its interest in the Windy Gap Project to Platte River Power Authority which was formed by the cities of Longmont, Loveland, Fort Collins and Estes Park to supply electrical energy to those cities.

The water supply of the cities within the Northern District is a combination of native South Platte water and Colorado Big-Thompson and Windy Gap water imported from Colorado's Western slope. The native South Platte water used by the cities includes ownership of shares in agricultural ditch and reservoir companies. As agricultural lands are annexed to the cities, agricultural ditch and reservoir water is transferred to the cities as part and parcel of the annexation. In this way, when a farmer wants to go out of the farming business, his land and water are converted to a residential or commercial use by a municipality in the area. In this fashion the cities of northern Colorado have been able to coexist with the agricultural community. As Bronowski observed, no great city has been built without a firm agricultural base.

Because the federal government holds title to much of the land in the key storage and diversion areas of the mountain watershed to the west of northern Colorado cities and farms, it was necessary - as a matter of geography and history - to place water storage and conveyance systems upon and across the forest and other public lands. The United States Supreme Court in United States v. New Mexico, 438 U.S. 696, 713-714 (1978) recognized that one of the primary purposes of the national forest system was to produce water for beneficial use under State law in, on and through the public lands:

> The water that would be "insured" by preservation of the forest was to "be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder." Organic Administration Act of 1897, 30 Stat. 36, 16 U.S.C. § 481 (1976 ed.) As this provision and its legislative history evidence, Congress authorized the national forest system principally as a means of enhancing the quantity of water that would be available to the settlers of the arid West.

The cities of Fort Collins and Greeley in northern Colorado are examples of municipalities which own shares in agricultural ditch and reservoir systems that occupy or traverse lands owned by the federal government.

The City of Fort Collins holds shares in the Water Supply and Storage Company which has reservoirs in the upper Poudre River Basin, receiving water from trans-mountain diversion systems that also occupy and cross federal lands. These structures include Chambers Lake, Long Draw Reservoir, Laramie-

Poudre Tunnel, the Grand River Ditch, Skyline Ditch, and the Cameron Pass Ditch. The Michigan Ditch and the Rockwell Ditchs owned by Fort Collins were built as agricultural ditches. Joe Wright Reservoir was built as an agricultural reservoir and has been converted to municipal use by the City of Fort Collins. Approximately 75,000 acre feet of water annually is involved in these systems.

The City of Greeley some years ago purchased the Mountain and Plains Irrigation Company system which also built and operated reservoirs in the Upper Poudre Basin. These include Comanche Reservoir, Twin Lakes Reservoir, Barnes Meadow Reservoir, Peterson Lake, Hourglass Reservoir, Columbine Ditch and Bob Creek Ditch. Approximately 8,000 acre feet of water is involved in these systems.

The City of Longmont owns three agricultural reservoirs within the boundaries of Rocky Mountain National Park. Water from the reservoirs is used for irrigation purposes by the City and surrounding farmers and has been included in the City's municipal water supply system by exchange with agricultural water users.

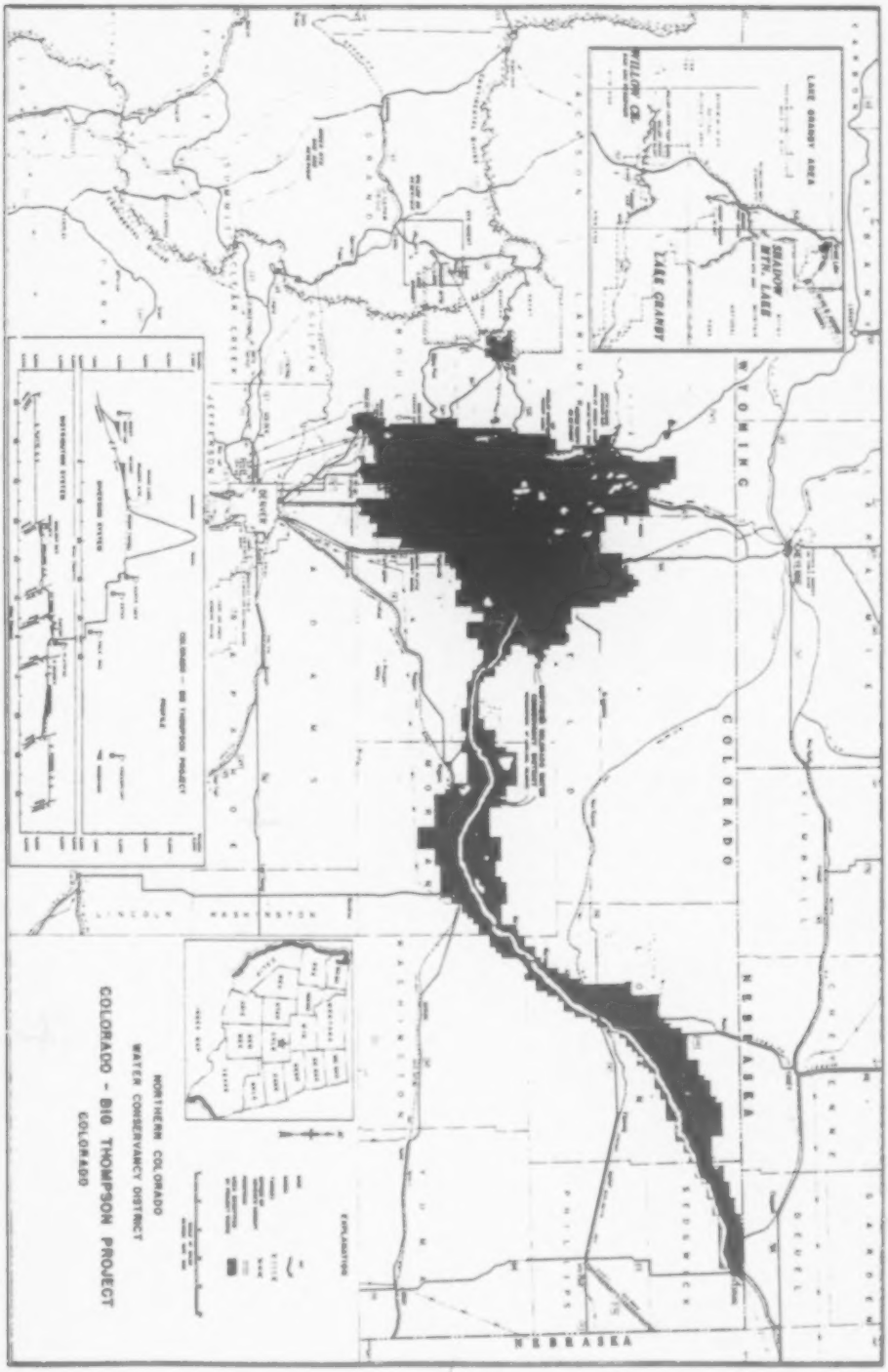
Each of the above-mentioned structures was completed and placed into operation prior to the passage of the Federal Land Policy and Management Act of 1976, and they are a vital link in providing agricultural and municipal water to northeastern Colorado.

We are very much in favor of the basic purpose of H.R. 2921, which is to affirm the right of already constructed

reservoir, diversion and conveyance structures to continue their existence on federal lands, without interruption or further conditions if they existed prior to the passage of FLPMA. We are very concerned about the "solely agricultural" language in H.R. 2921. Almost every agricultural system we know of in Northern Colorado has some of its shares held by a municipality. Change of water use should be governed by state water law systems and should not be the occasion for requiring additional federal permits or authorizations, if the facilities existing on federal lands prior to FLPMA are not being substantially altered. Post-FLPMA enlargements of facilities on public lands may need a new or separate authorization, but we believe that it was the intent of Congress in FLPMA to grandfather water facilities which already existed on the public lands.

We recognize that some federal agencies believe there may be problems with the legal status of some of the pre-FLPMA water facilities on federal lands. As a general principle, these legal problems, if they exist, are technical in nature. The systems were built and have been operating all these years in plain view, serving the public interest in producing water for farms and, increasingly, for municipalities. In an era when the federal government has largely withdrawn from financing water projects, it is especially important for Congress to allow the States to accomplish changes of use for existing systems without requiring federal conditions or approval which interfere with water allocation under State law.

We support H.R. 2921 with amendments which would confirm (1) that an easement exists for all facilities on the public lands which were constructed prior to the passage of FLPMA (October 1976) and (2) that change of water use of the waters carried through the pre-existing facilities is to be governed by State law and does not trigger any requirement for an additional federal approval or permit. We support the testimony of the Colorado Water Congress.


NORTHERN COLORADO
WATER CONSERVANCY DISTRICT
COLORADO - BIG THOMPSON PROJECT
COLORADO
EXPLANATION
COLORADO
WYOMING
NEBRASKA
NEBRASKA
LAKE GRANBY AREA
LAKE GRANBY
GRANDY RES. LAKE
WILLOW CR.
COLORADO - BIG THOMPSON PROJECT
PROFILE
DENVER
LINCOLN
WASHINGTON

Senator WALLOP. Larry, thank you. Let me suggest that that was what I had on my mind when I was talking to Doug MacCleery. We will seek to put something in the report language reflecting that conversation with him, that not only was this not our final word, but that we expect the Department to live up to the assurances that the Assistant Secretary gave us here this morning. Specifically, that they were happy to continue these negotiations on other inequities.

Mr. SIMPSON. Thank you.

Senator WALLOP. Thank you.

Mr. Carlson.

STATEMENT OF JOHN U. CARLSON ON BEHALF OF THE COLORADO WATER CONGRESS

Mr. CARLSON. Senator Wallop, thank you for the opportunity to be here today.

My name is John Carlson. I am from Denver. I have been asked by the Colorado Water Congress to appear and discuss with you our very great concerns about this bill. We favor the purpose of the bill, which is to secure those uses that have long preexisted FLPMA. However, in drafting the bill to limit the beneficiaries to those people who are solely agricultural we are going to hurt more people than we are going to help.

I want to give you some examples. Most ditches and most water users in Colorado, and I think in Wyoming and in Utah, and throughout the West, own ditches in common with other people either as co-tenants in a ditch—there might be rancher A,B,C,D—or there would be stockholders. Those interests in those ditches are individually owned and may be freely sold. So user one who owns in common with somebody else cannot tell user two not to sell.

Over the years, people have sold. As Mr. Simpson said, there are many, many municipalities that own a ditch right-of-way in common with farmers. By saying that the benefits of this legislation are limited to solely agricultural, what you do is set up everybody who is through no choice of their own in one of these ditch systems that has a multiplicity of interests, you set them up for a forfeiture action by the Justice Department and the Forest Service.

Now I have been practicing law for about 17 years, and we have been battling about threatened forfeiture actions all those times. Once they are brought, the Forest Service, and presumably Justice, pursues them to a relentless conclusion. I do not concede that they are entitled to win, but what I am suggesting to you is that by curing a situation for a purely agricultural user, there are all kinds of agricultural users who will be prejudiced.

Let me give you another example that involves a municipality. I see my yellow light is on, but I would like to go through this. The Board of Water Works of Pueblo, Colorado, serves water to Pueblo, the old steel mill town, in Congressman Strang's district. It owns a 50 percent interest in the Busk-Ivanhoe Tunnel, which is a ditch heading on the National Forest. There is a right-of-way under the Act of 1891.

The Forest Service's view has always been that so long as that interest was only 50 percent for municipal use, there was no right-of-way problem under the 1891 Act. However, agriculture in southeastern Colorado, a group of farmers, owns the remainder of that ditch company, the Busk-Ivanhoe, 50 percent of it. They are on the ropes. They need to sell. They want to sell right now, and they are going to sell to Aurora or some other municipality.

By that willing sale from the farmers to Aurora, Pueblo's right-of-way is jeopardized, through no act of their own. It is a very unfair situation. We respectfully entreat Congress to try to cure that.

Now we are concerned that the passage of this Act will be utilized by those who seek forfeitures to say Congress can do what it wants to. You passed this bill and you chose a pure small category of beneficiaries, and if you are not in that pure category you are not intended to get a benefit, and therefore it is an expression of Congressional will that others should be forfeited. That is a very unfair result.

We have made arrangements, and we are going to meet again today with the Forest Service and with the House Subcommittee staff, and with Mr. MacCleery to try and see if there is a very simple language change that could be accommodated in this bill. If there is, we will submit it to you within the week period. We understand the problem and the difficulties that Mr. Balcomb's clients and Mr. Knott's are in. We have no desire to harm them in any way.

However, we think there are also all kinds of additional users who are agricultural people who will be prejudiced. If you lined up the farmers who will be hurt by this commonality of ownership with other interests against those who have purely what I would call a cowboy ditch which only has a ranching interest or an agricultural interest, if the numbers of farmers involved with the municipalities is much greater than those by themselves.

Thank you, sir.

[The prepared statement of Mr. Carlson follows:]

Testimony of John U. Carlson
on behalf of the Colorado Water Congress

September 23, 1986

Mr. Chairman:

I appreciate the opportunity to appear here today. I am John U. Carlson, of Denver, Colorado. My testimony is offered on behalf of the Colorado Water Congress.

The CWC is a non-profit corporation formed in Colorado for the purpose of assisting its members in the conservation and development of Colorado's water resources. It has approximately 500 members, who are comprised of water users of all kinds--farmers, cities, towns, industries, ranchers, water conservancy districts, special districts, mutual ditch and reservoir companies, and many governmental bodies of the state of Colorado. The Colorado Water Congress has reviewed the proposed legislation in great detail, and has conducted a number of meetings of its broad-based membership in order to develop its position on the bill. It is the position of the Colorado Water Congress that the objectives of the bill are worthy of firm support, but that there must be amendments in order to assure that the intended benefits are in fact secured and that a sensible result is reached in this thorny area of federal law.

The Colorado Water Congress believes that H.R. 2921 requires amendments to deal with two major problems. First, however, let me state that we are in full sympathy with, and supportive of, the general goals of the bill. We understand the purpose of the legislation to be a confirmation of long-standing existing uses of federal lands for the conveyance of water to holders of water rights pre-dating the passage of FLPMA. We suggest amendments to the legislation in these general areas:

First, the existing bill limits relief to only those whose ultimate use of the water is "solely agricultural". This limitation is sure to cause unintended hardship and peril for the intended beneficiaries of the legislation. A great many of the ditch and reservoir rights of way throughout the western states are either owned in common by several (even many) persons, or are owned by mutual ditch companies with numerous individual shareholders. Typically co-owners of a ditch or reservoir and shareholders in mutual ditch companies have absolutely no control over the disposition which the other co-owners or other shareholders might make. It is also an obvious fact that municipalities regularly acquire ditch and reservoir rights and mutual ditch company shares in order to add to their water supplies. It will yield an utterly crazy result if the benefits of the legislation are destroyed to all users of a ditch when just one of them sells or converts his ultimate water usage to a non-agricultural use. Yet that is the result under the proposed bill.

The use of federal land to carry water to its place of ultimate usage is not altered nor made more burdensome by a change in the end use of water to purposes other than agricultural. It therefore makes no policy sense to impose a limitation on the curative benefits of the proposed legislation in the fashion of the present language of the bill. The federal government cannot fairly assert that the end use of the water changes the manner in which the existing ditch or other conveyance facility burdens federal land.

We therefore urge the Congress to delete the "solely agricultural" limitation.

A second general area in which the bill requires amendment has to do with ditch and reservoir rights of way issued by the federal government pursuant to the Act of March 3, 1891 (26 Stat. 1095) as amended by the Act of May 11, 1898 (30 Stat. 404). We understand the position of some

federal agencies to be that upon usage of any right of way issued under those acts for the conveyance of water for predominantly non-agricultural uses, the right of way is subject to forfeiture.

This construction is brewed from the following language of the statute:

> "Rights of way for ditches, canals, or reservoirs heretofore or hereafter constructed under the provisions of [43 U.S.C. §946, 26 Stat. 1095] may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power, as subsidiary to the main purpose of irrigation."

While presumably a new permit for existing structures might thereafter be available under the Federal Land Policy and Management Act of 1976, issuance of such permits is fraught with uncertainty, expense, and the prospect of substantial litigation under the federal environmental and permitting laws. Without in any way conceding the legitimacy of a federal agency viewpoint that forfeiture is available to the government, and without conceding in any way that existing users may be subjected to a whole new round of regulatory expense in order to confirm their long-existing usages of federal lands, the prospect of dealing with those threats--both in terms of expense, delay and uncertainty--causes us to entreat the Congress to cut through this morass and confirm the existing entitlements of its pre-existing grantees.

Perhaps some examples will be of aid. In my own experience I am aware of scores of ditch systems which are threatened in the manner described. The bulk of the population of Colorado receives a portion of its water supplies from ditches traversing federal lands and subject to these threats. We do not think, however, that this is uniquely a

Colorado problem. Colorado is like the other western States in that the bulk of the water-producing area of the state is in the high country where the federal government owns the overwhelming bulk of the land, and where many water systems head. Whenever conversions of the water rights occur from agricultural to domestic uses occur, this same problem is going to arise.

A particular example which demonstrates the problem concerns the right of way for the Busk-Ivanhoe Tunnel, an old transmountain diversion system by which waters of the Fryingpan River are carried through the Continental Divide into the Arkansas River Basin. The right of way for this project, obtained in 1924, was issued by the General Land Office pursuant to the Act of 1891 and 1898. For at least fifteen years approximately 50% of the project has been owned by the Board of Water Works of Pueblo, Colorado.

The remainder of the project is owned by a group of farmers in southeastern Colorado. That agricultural usage has thus far always sufficed to insulate and legitimize Pueblo's right to continued, uninterrupted usage of the underlying common ditch and reservoir right of way. Now, however agriculture is on the ropes in Colorado. The farmers who own the other 50% interest in the project desire to sell their interest. The only likely purchaser is a major municipality. This in turn threatens the continued peaceable enjoyment of the existing right of way by Pueblo, because it is apparently governmental policy that a conversion of the end use of the water right to a wholly municipal usage destroys the validity of the right of way issued under the 1891 Act, and the validity of Pueblo's long-standing usage. The consequences of such an interpretation are patently unfair to Pueblo, and do not benefit to the United States, unless it has become federal policy to upset settled expectations and destroy existing patterns of usage. Moreover, the farmers suffer a fundamental impairment in their ability to

market one of the few remaining assets, water rights, that the market continues to value. This is hardly fair to them. In an era when the official policy of the nation is to encourage and foster free market solutions to water resource problems, it is surely counterproductive to imbed unintended restraints stemming from obdurate constructions of the public land laws.

We therefore request that the Congress make further amendments to H.R. 2921 as follows:

(a) eliminate the restriction of the benefits of the bill to "solely agricultural" users;

(b) make clear that existing users with facilities for the conveyance of water on the public lands, which were constructed and in place prior to the passage of FLPMA, are secure in their titles without further recourse to permitting costs and uncertainties. In this connection, Congress should clearly provide that a change in the ultimate use of water once delivered <u>off</u> the federal lands does not trigger a change in the status of a pre-existing and valid right of way.

Senator WALLOP. Thank you, Mr. Carlson.
Mr. Miskel.

STATEMENT OF HAROLD E. MISKEL, MANAGER, RESOURCE PLANNING, CITY OF COLORADO SPRINGS, CO, ON BEHALF OF THE MAYOR AND CITY COUNCIL

Mr. MISKEL. Senator, my name is Harold Miskel. I am here on behalf of the Mayor and City Council of Colorado Springs. My Mayor sends his regards. He has been here many times before me.

I wish to just echo basically what was testified to by Mr. Carlson and Mr. Simpson. The City of Colorado Springs has a number of water rights. Most of these points of diversion are located on Federal lands, and in many cases we own shares in mutual ditch companies that rely upon old rights-of-way across Federal lands for the conveyance of water.

We are concerned that the limitation in the bill to solely agricultural, as stated by Mr. Carlson, even though it will protect a number of farmers and ranchers in the West, we think it also creates serious problems for a number of others. For one thing, we think that it provides or results in a deterrence to the free market system of exchange of water rights in Colorado.

The fear of litigation that may occur as a result of the requirement for a FLPMA permit in the transfer of an agricultural right to municipal use is enough to deter the sale of that right, at least to affect the market value of the right.

In the case where systems are already owned, either all or in part by municipalities, old systems that were originally intended for agricultural use and are now being used for municipal purposes, we face the risk of the right-of-way being subject to forfeiture. We think that is unfair, and I do not think that Congress really intended that with the passage of FLPMA.

So while we appreciate Congressman Strang's efforts to resolve some of these issues, we think that maybe he has not gone quite far enough. We think that it is not only appropriate but also advisable for Congress to take a look at this now while we have an opportunity to resolve these issues that are now before us.

I appreciate the opportunity to be here to testify. I have submitted a written statement which I wish to have incorporated into the record, and also Mr. Carlson has submitted one on behalf of the Colorado Water Congress and we would like that made a part of the record, as well.

[The prepared statement of Mr. Miskel follows:]

Testimony of Harold Miskel
Re: H.R. 2921

September 23, 1986

My name is Harold E. Miskel. I am the Manager of Resource Planning for the City of Colorado Springs. I am here today on behalf of the Mayor and City Council of Colorado Springs. Nearly all of the diversion points of water rights of the City of Colorado Springs are located on U.S. Forest Service (USFS) lands. Most of the rights of way for these water rights have been obtained in the name of the City; however some of the rights of way are owned by mutual ditch companies in which the City has purchased shares. As a majority shareholder in these mutual companies we are concerned that the validity of pre-Federal Land Policy and Management Act (FLPMA) rights of way not be jeopardized when there is a transfer of the end water use from agricultural to municipal. Second we believe the rights of way should be declared valid by Congress without the requirement to obtain a new FLPMA permit. The City of Colorado Springs urges passage of legislation which simply confirms the validity of pre-existing rights of way when there is a change in the end use of water.

We firmly support the concepts proposed by the Colorado Water Congress. In Colorado there are many, many water conveyance systems which rely on rights of way across Federal lands in order to gather, transport and put to beneficial use this very valuable resource. In numerous instances these

systems have been sold in whole or in part after initial construction to municipalities. In the future it is reasonable to expect municipalities to continue to purchase agricultural water rights and systems and convert them to municipal use in accordance with State laws. The free enterprise nature of our State's water right system naturally encourages a willing exchange of property. This market system is healthy for Colorado and for the nation. We live in a time when water resource planners are being urged by federal agencies to avoid new projects on the federal lands, and to make fuller use of already existing facilities. A major impediment to that approach is the constraints placed on use of agricultural rights of way for municipal purposes. We urge that such impediments be eliminated. The bill before you restricts all benefits of the legislation to "solely agricultural" uses. This is counter-productive, and ought to be eliminated.

Farmers who have long-standing agricultural water rights which are dependent upon pre-FLPMA rights of way across federal lands to the places of ultimate use are faced with the risk of being unable to sell their water rights -- at least not at fair market value. Present USFS interpretations of the old statutes which authorized the original rights of way would preclude or at least substantially discourage such sales between willing sellers and buyers. The mere threat of additional litigation over the issuance of a FLPMA permit for the new use of an existing right of way is sufficient to

deter such a sale. This is all an unnecessary deterrance to the free exchange of property rights -- especially where the change in the type of its use of the water in the hands of the consumer has no actual impact upon the USFS lands. There is no rationale for a requirement for a new permit as a condition to validating the right of way just because there is a change of use of the water itself that occurs off the Forest Service lands. The easement structures on the public lands and the flow of the water through the structures remain the same when there is a change in the ultimate use of the water from one of the irrigating crops to municipal uses.

Finally, the change of ownership of an easement across public lands from an agricultural owner to a municipal owner should be encouraged, even positively supported by the government agencies. These changes typically result in better maintenance and care of the structures located on government land with better coordination with the federal agencies over use of the easements.

In conclusion, Congress should not discourage willing exchanges of private rights by maintaining overly rigid and out-of-date system distinctions over purposes of ultimate use of the water. The City of Colorado Springs asks for your support for the Colorado Water Congress proposal.

Senator WALLOP. Of course they will be.
Mr. Knott.

STATEMENT OF BERNARD KNOTT, OAK CREEK, CO

Mr. KNOTT. I want to thank you, Mr. Chairman, for giving me this opportunity to speak in support of H.R. 2921, a bill concerning irrigation conveyance systems on National Forest lands.

Some of you may wonder why I would come over halfway across this great country to speak for three minutes or less in support of this bill. I compare this trip to selling of calves, yearlings, and lambs at the local auction. You spend a year working to raise these animals, hopefully to make enough money to carry you through the next year's operation. I want to be there when these animals sell. This is the climax of six years or more work on this legislation. It must pass this Congress or I feel our efforts are wasted.

Mr. Balcomb is here to answer all the legal and technical questions. This is the same as when a vet would come to take care of your serious animal health problems at the ranch. There are these three questions I would like to ask, though:

Since the Administration backs H.R. 2921, and suppose the Senate lets the bill die, will the Senate get another moratorium for the ditch owners? Or will they face a court battle?

Two, are these other interest groups who want to expand H.R. 2921 going to pick up the cost for a court battle?

And three, where have these other interest groups been on previous hearings?

Thank you, Mr. Chairman.

[The prepared statement of Mr. Knott follows:]

STATEMENT MADE TO THE SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION

September 23, 1986

Mr. Chairman and committee members, I am Bernard Knott from Oak Creek, Colorado. Oak Creek is located in the northwest quarter of Colorado. I am a rancher concerned and involved with the problem of ditches crossing the National Forest lands. I would like for the problem to be solved, so if my son would like to go into ranching he is not faced with the same problem.

I am speaking in support of bill H.R. 2921.

I would like to explain why I feel it is essential that FLPMA be amended under the right of way section concerning agricultural water conveyance systems built prior to October 1976.

1. Under FLPMA the Forest Service will not recognize a granted right of way. They wish to limit it now to 30 years, and at the end of 30 years, the permit will come under the then existing rules and regulations. At the end of 30 years from now, the Male, Moore and Co. Ditch, in which I am interested, would have been in existence and in use for 100 years but they would treat it as though it was a new construction project.

2. The annual payment is to be recomputed every five years, but the holder of a permit is not guaranteed that the price will not skyrocket.

3. The Forest Service is very reluctant to put a clause in the permit that will allow a transfer of the permit to a new owner whenever the land and water rights change ownership.

4. The permit can be terminated whenever the Forest Service so desires.

Bill H.R. 2921 covers the above mention concerns.

A. The owner of a ditch can make written applicaton to the Secretary of Agriculture for a permanent easement for ditches crossing National Forest Lands.

B. There will be no annual fee.

C. Easements issued under the authority of this bill will be fully transferable with all existing conditions and without the imposition of fees or new conditions or stipulation at the time of transfer.

D. Termination cannot be whenever the Forest Service so desires.

Some people fear this bill concerning water conveyance systems is for the benefit of only a few people. What is the definition of a few people? Do you call 3700 and plus people who have Special Use Permits a small number? This bill will affect these 3700 and plus people, which in turn will affect private property rights in the Western States.

In closing: "Seek and you shall find; Ask and you will

receive"; The holder of these special use permit concerning irrigation conveyance system is asking the Subcommittee on Public Lands, Reserved Water and Resource Conservation to pass H.R. 2921 as is out of committee to be voted on by the Senate with a yes recommendation.

I would like for this statement to be made a part of the record. Thank you.

Senator WALLOP. Thank you, Mr. Knott.
Mr. Balcomb.

STATEMENT OF KENNETH BALCOMB, GLENWOOD SPRINGS, CO

Mr. BALCOMB. Thank you, Mr. Chairman. My name is Kenneth Balcomb. I am an attorney from Glenwood Springs, Colorado. I would like to offer my written statement for the record, as well as the Joint Statement of the Colorado Cattlemen's Association and the Gunnison County Stockgrower's Association; the statement of Mr. Bernard Knott's father, Dan Knott, from Oakrey, Colorado; and the statement of the Routt County Cattlemen's Association all in favor of H.R. 2921 as passed by the House.[1]

I live in the 3rd Congressional District. Congressman Strang is my Congressman, and I am proud of the fact he was able to stand up to what is obviously pressures that have been brought on him to try to expand the bill.

The bill that we are looking at today is the result of your directions at the last hearing before this Committee under somewhat identical circumstances, which were as I remember directed to me to sit down with the Forest Service and work out a bill. H.R. 2921 is the result of that.

I acknowledge that neither the landowners nor the Forest Service got all they hoped out of the compromise, but we got enough, each of us, that we could come together and resolve the problem. I certainly strongly recommend to the representatives of the other entities, the mutual ditch companies and all that kind of thing, that surprisingly enough the Forest Service was easier to get along with than I anticipated when you told me to go talk to them.

I think they will find that Mr. MacCleery will do all he can within the framework of the law to work it out. Our problem, however, today is one of time. As I understand it, the Congress is going to adjourn on the 3rd. The only way that this bill can pass, as I view it, is to get on the consent calendar in the Senate, be passed without objection, and be sent to Mr. Reagan's desk.

If there is any kind of an attempted amendment, I am certain it is going to create negotiation problems that just cannot be accomplished in the time frame that we have left. I am certain that my colleagues here whom I have known for a great many years and respect, particularly Mr. Carlson whom I consider a very dear friend, appreciate your remark that you will put in and see that it is in the Committee Report that this is not the last change we are going to make in FLPMA; that we are going to make all necessary changes to make things reasonable. I think that is a promise from Congress that I could not make that you will carry out.

So I just want to say on behalf of my clients that we have been working on this problem since 1978. It is ready for passage. It is ripe to go. We just really seriously request the Congress to allow

[1] Statements appear following Mr. Balcomb's statement.

the bill to pass and be signed into law, and to cure other problems as they may arise down the road and not to interfere with this passage of this bill.

Thank you, Mr. Chairman.

[The prepared statement and additional material from Mr. Balcomb follow:]

STATEMENT MADE TO THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE CONSERVATION OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

September 23, 1986

Mr. Chairman and Members of the Subcommittee:

My name is Kenneth Balcomb. I am an attorney from Glenwood Springs, Colorado. For those of you unfamiliar with that part of the country, Glenwood Springs is located about 175 miles east of Denver in the central part of Western Colorado. This appearance today is, I would like to note, the fourth time I have testified on this particular legislation.

I am here today to speak in support of H.R. 2921, a bill introduced by Congressman Strang to eliminate the possibility of a confrontation between water users and the National Forests. It concerns the right to use irrigation ditches on National Forest lands. The Bureau of Land Management is no longer a pre-1976 problem because they have expressly acknowledged a recognition of all pre-1976 ditches. The problem arises because previous legislation appears, in part, to be contradictory, and apparently does not furnish sufficient guidance to the United States Forest Service as to how they should treat with irrigation ditches. My clients in this matter are two ranchers, Mr. Dan Knott and his son, Mr. Barnard Knott, both of Oak Creek, Colorado, who own property adjacent to the Routt National Forest, and who receive part of their irrigation water supply through a ditch constructed in about 1911. Part of the ditch is on the Routt National

Forest. The impasse, previously existing, between the Forest Service and my client, however, is not confined to those two ranchers or the one ditch, but apparently affects more than 3,500 irrigators with ditches on National Forest lands throughout the western part of the United States.

The dispute was clearly articulated in two letters, one dated April 8, 1977 from the Chief Forester, John R. McGuire to the American National Cattlemen's Association. At one point in his letter Mr. McGuire says, "When the facilities in use can be confirmed as being in existence prior to current authorities, then nothing further is required. However, in the event of subsequent change in ownership or in the facilities themselves, then an appropriate permit or easement, issued subject to the later authorities, must be secured."

In a letter dated October 1, 1982 from the Secretary of Agriculture, John R. Block to Senator William L. Armstrong of Colorado, the Secretary stated, "Under provisions of the Federal Land Policy and Management Aact (FLPMA) of 1976 and other earlier legislation, right-of-way for private irrigation ditches and similar uses of Federal lands must have specific authorization. . . . [t]he requirement for a right-of-way permit does not affect any individual water rights." I have attached copies of both letters and would ask that this statement with attachments be made part of the record of this hearing.

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As everyone on the Committee is aware, in the middle and late 1800's the United States Congress by various land acquisition laws made a determined effort to induce settlers to go west, to establish ranches and farms, and to reclaim that arid country for the benefit of the Nation as a whole. Water was essential for this endeavor and early on, as various U. S. Supreme Court cases have indicated, the Congress recognized the right of farmers to appropriate water arising on public lands for the irrigation of arid private lands. In 1866 there were no Forest Service reservations and the lands settled upon were public lands. The act of July 26, 1866 (43 U.S.C. §661), in pertinent part, provided:

> Whenever, by priority of possession, right to the use of water for mining, agriculture, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; . . . (emphasis added)

This statute was unquestionably passed in aid of the Congressional purpose of inducing the settlement of the West. The land use agencies today do not question the fact that this statute severed public land and the waters arising thereon. They recognize that under numerous court decisions, they are not free so to do. But, because of other legislation they feel compelled

to distinguish between the water and the ditch necessary for its utilization, ignoring the fact that the two are treated as one in the 1866 statute. The 1866 statute not only granted the right to the use of water on public lands, but also granted a right-of-way on public lands to effectuate the use of the water. Without the latter, the former would be meaningless.

While the homestead laws allowed entry on the public lands for the purpose of acquiring title thereto, they required before patent could issue, irrigation of the land, for agricultural purposes, continuous occupancy, and the construction of a house. The later Desert Land Act of 1877 increased the acreage entered by an individual from the previous 160 acres to 320 acres, but required irrigation of the land. All patents for lands purchased by such settlers was subject to the prior appropriation of water and ditches and canals thereon. The water right and the ditch were thus inseparable.

In 1891, the authority to reserve lands from the public domain for national forests was granted by Congress, and in the same year another series of Acts were passed relating to ditches. This latter act granted a right-of-way through both public lands and reservations for canals and ditches, whether constructed by individuals, corporations, or associations of individuals, with the proviso that, upon completion of ten miles of ditch, a map thereof be filed with the Secretary of the Interior. The purpose of the latter provision was to reflect the

ditch on land records so that patents could issue subject thereto. Since all patents subsequent to 1866 contained an exception regarding ditches, this requirement of filing was, in reality, unnecessary, until it affected a reservation which could not reasonably accomodate the ditch.

The United States Supreme Court has affirmed that the 1891 Act did not repeal the 1866 Act but was supplementary thereto. It thus appears that under the two acts, the first step toward obtaining the right-of-way was the construction of the ditch, followed by, in the case of the 1891 act, the filing of a map when ten miles of ditch had been constructed.

In the letter previously referred to from Chief Forester McGuire he states that the 1891 Act "required an easement from the Secretary of the Interior for all subsequent construction of irrigation works across public lands." His interpretation of the 1891 Act is simply not correct. Numerous decisions by the Department of the Interior indicate that the 1891 Act was a grant of right-of-way effective upon construction of the irrigation facility. And, even if reasonable conditions might be imposed on the exercise of the grant by the Secretary of the Interior, such conditions could not have the effect of denying the grant. Importantly, one such decision denied to the Secretary the right to deny a transfer.

Subsequent legislation between 1891 and 1901 provided for rights-of-way in efforts to accomodate the ever increasing

variety of uses such as electric transmission lines and telegraph lines. Such later laws were expressly made permissive, as opposed to the outright grant in the 1866 and 1877 Acts, thereby allowing the issuing agency to impose conditions, including the right to revoke for violation of conditions. The 1976 Federal Land Policy and Management Act (FLPMA) repealed, so far as National Forests are concerned, the 1866 and 1891 Acts. Such repealer, however, cannot affect acceptance by entrymen of the legislative grants made by the 1866 and 1891 Acts prior to 1976.

As I indicated earlier this is the fourth time I have testified before Congressional Committees on this legislation. This Committee suggested in 1983 that we try to resolve our problems with the Forest Service. While attempt was made to resolve the differences, nothing came of nuemrous conferences until the hearings in the House subcommittee on H.R. 2920 and 2921. At those Hearings, Congressman Sieberling made it clear to all present that he expected the Forest Service and my clients to reach an acceptable agreement. As a consequence, I stayed over in Washington an extra day. At those negotiations the Forest Service and I agreed on H.R. 2921 as passed unanimously by the House, and which is before you today.

Both the Forest Service and I, where I was the only apparent representative of the ditch owners, made substantial concessions from the previous intransigent positions of both

parties. The result was a bill, H.R. 2921, which benefits both the water user and the people of the United States as represented by the Forest Service.

In order for the Forest Service to have complete files on ditches including a map of the ditch, the water users agreed to apply for an easement and furnish the map. Conversely, in order to accomodate the claim of right of the landowners, the Forest Service agreed to issue a permanent easement upon application, without charge, which would be transferrable and recordable for pre-1976 ditches. While there are other trade-offs involved, the foregoing is the crux of the compromise.

I once had a very excellent trial judge tell me that he knew his decision was right and equitable when neither party was completely satisfied, but neither side felt injured enought to appeal. So, also, is a negotiated compromise not always entirely satisfactory. Neither party got all they wanted, but both parties felt the end results were in the best interest of everyone involved. As a consequence, my clients, and I, and I believe the National and Colorado Cattlemen's Associations, the Farm Bureau and other ranching and farming oriented associations as well as ranchers and farmers at large wholeheartedly support Senate passage of H.R. 2921. I am also given to understand the Forest Service, and therefore the Adinistration also support passage.

Passage of H.R. 2921, and I emphasize, as it passed the House, will benefit ranchers and farmers in the states west of the 100th principal meridian. It will benefit the Forest Service in the administration of National Forest Lands. It is, as noted, of no concern to the Bureau of Land Management because they already recognize pre-1976 ditches.

The cloud on the horizon to the passage of H.R. 2921, if such exists, is the Colorado Water Congress, and its major entity participants as opposed to the membership it represents. They have criticized H.R. 2921 as not providing relief for all of Colorado's problems with the Forest Service. They seek, as I understand it, to amend the Bill to resolve other Colorado problems unrelated to the irrigators' ditch problems. They recognize the Congress may well be sympathetic to the plight of irrigators who were promised rights-of-way for ditches, but may not be sympathetic to problems unrelated to the 1866 and 1872 Acts. They, in other words, seek to ride on our coattails.

Congressman Seiberling assured those of us present at the House hearings on H.R. 2921 that the House would not approve any amendments to enlarging the scope of the legislation beyond irrigation facilities. In our view, particularly in light of the House position, it would be a calamity for Congress to seriously listen to those protestants who heretofore have never appeared at any Congressional hearing on this Bill or its predecessors. It is only when the Bill appears quite possible of passage that they

appear, or at least said they would, and attempt to benefit thereby. Mr. Knott has invested thousands of dollars in the effort to protect his right, and his childrens' right, to use his 1911 ditch. H.R. 2921, without help from the Colorado Water Congress, is now ready for passage by the Congress. We are sympathetic with the problems of the entities with the Forest Service. But we cannot afford to lose H.R. 2921 to accomodate problems which are not westwide. H.R. 2921 is not a Colorado bill. It is a westwide bill. This Committee should not allow the problems of an individual state to obfuscate its original and proper purpose.

H.R. 2921 confines its contemplated application to ditches utilized for irrigation, stockwatering and private domestic purposes. It is not intended to authorize recognition of a grant for large municipal diversion systems now subject to the requirement of a permit or easement. The bill is intended to aid only small ranchers and farmers and to eliminate a technical hiatus created by the apparent conflict resulting from the passage of various laws. If there is any class of user of the public lands the government might be presumed to especially favor, it would be the small rancher or farmer, and their successors, who, at the instance of the government entered upon and reclaimed that land. The Forest Service and the Administration agree.

We respectfully urge the passage of H.R. 2921 in its present form.

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spec. cases under: R2-5233 RF P&PI R4 L. Ft. Route

Honorable William L. Armstrong
United States Senate
Washington, DC 20510

Dear Senator Armstrong:

We appreciate the opportunity to respond to the concerns expressed in your August 3 letter regarding water rights and the fees charged for irrigation ditches permitted across National Forest System land in Colorado.

As you noted, the Administration has made its position clear with respect to Western water rights. Those rights are largely a matter determined by the respective States involved.

Under provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 and other earlier legislation, rights-of-way for private irrigation ditches and similar uses of Federal lands must have specific authorization. Section 504 (g) of the Act requires an annual rental fee for such private uses of these lands.

As provided in FLPMA, the Forest Service special uses regulations (36 CFR 251.57) allow the authorized officer discretion to waive part or all of the fee, under certain circumstances, "when equitable and in the public interest." However, we do not believe it would be equitable or in the public interest to waive the fee for permitted irrigation ditches that are intended to exclusively serve private purposes.

We understand and appreciate your concern over this matter. However, the water rights in question do not exempt the ranchers and farmers from the permit and fee requirements for ditches crossing National Forest System lands. Conversely, the requirement for a right-of-way permit does not affect any individual water rights. Owners of ditches and water improvements elsewhere in the West generally have accepted these requirements. Even in Colorado, owners of a majority of the ditches that cross the National Forests have proper authorization and are paying appropriate fees. Proper authorization for the ditches provides protection for the ranchers and farmers, as well as being of benefit in the event of a sale of the property.

We appreciate your views and hope this helps you understand our position.

Sincerely,

/s/ John R. Block
Secretary

cc: CRO, LA, Secretary, R-2, Shepherd

FOREST SERVICE
P.O. Box 2417
Washington, D.C. 20013

2710
APR 8 1977

Mr. C.W. McMillan
Executive Vice President
American National Cattlemen's
Association
Suite 1020
425 13th Street
Washington, D.C. 20004

Dear Mr. McMillan:

This is in further response to the December 14, 1976, meeting with you and representatives of the Public Lands Council. You asked that we look into the need for special use permits for irrigation ditches across National Forest lands in Colorado. I provided the information concerning the other items discussed in our meeting in my letter of February 8. The complexity of this subject, however, has been more difficult to put in a condensed form. Thank you for your patience.

Prior to 1891, ditches could be constructed across the public domain without formal authorization. Once constructed, they were usually accorded easement status by local custom. Eventually, this custom was recognized in law by the Acts of July 26, 1866, and July 9, 1870. These Acts are coded under 43 USC 661, and apply only to unoccupied and unappropriated public domain. As western settlement grew, increasing conflicts occurred, and in 1891 the Irrigation and Drainage Act was passed. This Act did not extinguish rights acquired under the 1866 and 1870 Acts, but required an easement from the Secretary of the Interior for all subsequent construction of irrigation works across public lands. Soon thereafter, the National Forests were reserved from the public domain by Presidential proclamations and thus took on the stature of appropriated lands. Consequently, any irrigation works since constructed across National Forest land should have been authorized either by a Forest Service permit or an easement by the Secretary of the Interior. Therefore, ditches developed since 1891 without proper authorization have not established a legal right-of-way. Rights-of-way established prior to the time of the reservation, however, are recognized as having easement status.

2 Mr. C.W. McMillan

The Federal Land Policy and Management Act of 1976 (P.L. 94-579) repealed earlier statutes insofar as they pertain to rights-of-way across Federal lands. All water transmission facilities approved by the Secretaries of Agriculture or Interior must now be authorized in accordance with this new Law.

Congress, in the Fees and Charges Act of 1951, gave specific direction to Government agencies to collect fees for the use of Federal property. Budget messages of the Presidents as early as 1947 included statements supporting the policy that services or privileges provided by Federal agencies should be self-sustaining to the fullest extent possible. In 1964, the Bureau of the Budget, in response to the President's message to the Congress, completed its Natural Resources User Charges Study. The principles established in that study provided guidelines for the development of a system of user charges for Federal natural resource areas and projects. Specifically in arrangements for the general use of land resources, it established that the Government should recover fair market value for the use of Federal land resources. Also, where Agency review indicates that market values have changed, then agencies are required to update fees when current leases expire or when the leases provide for periodic adjustment. If provision for adjustment is not present in a lease, then it is to be included at the time of renewal. This premise was affirmed by the Congress in Section 102 of the Federal Land Policy and Management Act by its declaration of policy that "The United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute."

For a number of years, our field officers have been reviewing water transmission facilities on a Service-wide basis. There is no intention to terminate or deny the use of legitimate facilities and we know of no instance where the Forest Service has done so. Our purpose is to ensure that the user complies with the resource protection obligations incident to that use and that the public receives a fair rental for the use of its lands. As the opportunities for review occur, Rangers are checking each situation carefully before determining that a Forest Service permit and fee is proper. When the facilities in use can be confirmed as being in existence prior to current authorities, then nothing further is required. However, in the event of subsequent change in ownership or in the facilities themselves, then an appropriate permit or easement, issued subject to the later authorities, must be secured. Similarly, when the change involves an established permit or easement, then appropriate revisions are made to bring that authorization up to present-day standards. We believe these occasions for change provide the most reasonable time for both parties to make needed adjustments and are within the intent of the Executive direction given.

Mr. C.W. McMillan

It is also important to understand that the rights to water, which are granted by the States and the rights-of-way needed for transmission of that water, are not the same. The acquisition of a water right does not automatically convey a right to transport the water across the land of others. The water owner must acquire that right from the landowner, or be given the right by law. While some States do have such laws relative to private lands, they are not applicable to Federal lands.

It appears that the situation in Routt County developed as the result of a misunderstanding of current policy. That is, the updating of permits only when transfers, modifications, or requests for permits occur. Presumptions concerning the new Federal Land Management and Policy Act also contributed to the circumstances. A number of new permits were sent out and ranchers took the Supervisor's action to be an imposition of new policy. The Regional Forester has since reiterated earlier instructions to the Forest Supervisor. Any fear that the Forest Service, through its permit, might have some effect on the future value of ranch properties is not justified. The Forest Service is trying to authorize rights-of-way for ditches that now have a questionable right to cross the land. An unauthorized ditch is in a much more tenuous situation than one which is properly permitted and gives the owner access to departmental appeal procedures. This is because the permit does spell out the contractual relationship between the Forest Service and the user. We also believe the permit helps both parties to provide for proper ditch maintenance and for protection of the land. The payment of a fee has a binding affect on each.

We recognize that this situation has developed over 70 years and do not expect there will be easy acceptance of these changing circumstances, particularly the requirement for a fee. At this time, there are about 3,400 water transmission facilities authorized on National Forest lands. Approximately 1,800 now provide for payment of a fee for use of the land, and we anticipate that most of the remainder should be on a charge basis.

Ditch owners who still have questions should contact the Forest Supervisor in Steamboat Springs, Colorado. He will be more familiar with the specific of their individual concerns and the administrative remedies available.

Sincerely,

for Dave T. Jonson

JOHN R. McGUIRE
Chief

Joint Statement

of

The Colorado Cattlemen's Association

and

The Gunnison County Stockgrower's Association

Before the

Subcommittee on Public Lands, Reserved
Water & Resource Conservation
Committee on Energy and Natural Resources

Regarding

H.R. 2921

September 23, 1986

The Colorado Cattlemen's Association, the nation's oldest active livestock association and the Gunnison County Stockgrowers Association represent major public land users in Colorado and have long taken a very active interest in the creation, growth, and refinement of the laws governing the adminstration of public lands.

The enactment of H.R. 2921 would do so much to serve the common needs of both the public and nearby private lands in the West, and longstanding concept of the supremacy of state water law. The issue in this legislation involves some 900 plus ditches in Colorado and over 3,000 ditches elsewhere throughout the 11 western states.

The Federal Land Policy and Management Act of 1976 (FLPMA) established a new system of permits and fees for rights-of-way across Federal lands. The Act, however, did not clearly distinguish between previous right-of-way grants and the post-FLPMA permit system. As a result, federal land managers throughout the west are now attempting to subject irrigation ditch property rights to the regulatory and fee permit provisions of FLPMA. For example, in Colorado the Forest Service is now requiring all farmers and ranchers to: (1) sign a revocable permit or easement if they want to continue using their irrigation ditches that cross federal lands; (2) pay fees for the use of the ditch; (3) obtain written permission from the agency prior to transfer of these ditch rights-of-way to new owners of the irrigated private land. In addition to threatening revocation of grazing privileges on federal grazing allotments as a means to force compliance with these

requirements, the Forest Service has instituted proceedings in the federal courts for declaratory relief and permanent injunctions.

These water conveyance rights-of-way have been granted by federal legislation dating as far back as the Act of July 26, 1866, (43 U.S.C. 661), when the only requirement for such a right-of-way across federal land was to build the ditch. A later law, in 1891 (the Irrigation and Drainage Act), required filing upon construction of the ditch only if the ditch was greater than 10 miles in length. Simply put, the construction of the ditch alone was sufficient to confirm the grant of a right-of-way, available for use, or subsequent transfer, as a vested property right, free of regulatory constraint. Yet, as much as a century later the land agencies consider holders of these rights-of-way to be in trespass and the agencies are now attempting to convert these grants into required FLPMA permits or "special use" permits on National Forest lands and are now threatening termination of these rights-of-way for persons who refuse to comply.

Clearly, since at least 1866 the Congress and the courts have recognized state supremacy in the matter of intrastate use of water. The 1866 legislation expressly recognized that the use of water must be accompanied hand in hand with the right to convey the water to its place of use. Without the means of conveyance, the water right itself is worthless.

Farmers and ranchers throughout the west, legally obtained the grant--by the simple construction of the ditches and canals--of a non-fee right-of-way across Federal land, free of federal regulatory control. That opportunity was afforded them because

congress wanted to induce settlement of the arid West. These ditches, for the most part, have been diligently maintained, because under Colorado and other state water laws, if you don't use the water, you lose it. The ditches remain in service today providing water for farms, ranches, and municipalities as intended. It is not now appropriate to subject ditches lawfully constructed and in use under statutes, local law or custom prior to October 21, 1976, to a new regulatory fee and permit system. Such ditches are properly regarded as a grant of a prior private property right, available for subsequent use and/ or transfer absolutely free from federal regulatory control including new conditions or stipulations.

We note that H.R. 2921, in line 6-7, page 2, calls for the creation of "permanent" easements. We very strongly support that language. It provides a clear and simple mechanism to clarify title to these rights-of ways and to end the controversy.

However, we oppose giving the Secretary of Agriculture the authority to "terminate" or "suspend" the easement once it is granted permanently to the ditch owner. Let's not give the Secretary the opportunity to come back in at a future date and reopen this controversy. If the easement is in fact abandoned, the United States may seek to quiet its title, as any other landowner might, in the courts. We would hope that a "permanent" easement is in fact that-- so that lenders to agricultural operators may look to it as the foundation it actually is for the value of irrigated land so that title companies can proceed to issue policies when the private land served by the ditch is transferred or sold; and so

that legitimate livestock and farm operators will not be faced with the choice of either a property right long held being taken without just compensation, or bearing the enormous burden of taking on the federal government in the courts.

We strongly support this legislation and urge, due to the potential volatile nature of this issue in large areas of the West, that its passage be pursued with urgency.

We are pleased to express the livestock industry's wholehearted support of H.R. 2921. This legislation touches on an issue which runs very deep through our communities and threatens longstanding, legitimate businesses that have done much to contribute to the growth and development of modern agriculture along the river valleys of the West. Attempts by the land managers to impose these permit requirements on ditches long regarded as privately controlled have been very damaging to the incentive and ability of local ranchers and farmers to cooperate with local Forest Service and BLM managers.

STATEMENT MADE TO THE SUBCOMMITTEE ON PUBLIC LANDS,
RESERVED WATER AND RESOURCE CONSERVATION

September 23, 1986

Mr. Chairman and committee members, I am Dan Knott a rancher living at Oak Creek, Colorado.

I am in support of H.R. 2921 which amends the 1976 Federal Land Policy and Management Act concerning agricultural water conveyance systems in order to resolve title claims arising under acts repealed by FLPMA.

To avoid dulpication, I am not going into the back ground and need for this legislation as this will be presented by other testimony.

At a previous Senate hearing on a bill concerning water conveyance systems the Public Lands, Reserved Water and Resource Conservation Subcommittee asked the panel and administration to work together to resolve the problem of irrigation systems crossing the National Forest Lands. H.R. 2921 is the result of the above parties working together to resolve the problem.

Mr. Chairman thank you for your consideration, and allowing me to present this statement.

"PRODUCERS OF TOP QUALITY FEEDER CATTLE"

ROUTT COUNTY CATTLEMEN'S ASSOCIATION

STEAMBOAT SPRINGS, COLORADO 80477

September 23, 1986

Mr. Chairman and committee members, the Routt County Cattlemen's Association would like to go on record in support of H.R. 2921; concerning permanent easements for water conveyance systems in order to resolve title claims arising under the Federal Land Policy and Management Act of 1976. Not only will the passage of this bill protect the water and property rights of most of our members, but it will affect members from other Cattlemen Associations.

We would like it understood that we are talking about water systems used solely for agricultural irrigation or livestock water purposes, and in use prior to October 21, 1976. The passage of this bill would greatly help the agricultural industry.

Thank you for your time.

Respectively submitted,

Leonard Vineyard

Leonard Vineyard; President
Routt County Cattlemen's Association

Senator WALLOP. Thank you, Mr. Balcomb.
Mr. Stolte.

STATEMENT OF DENNIS C. STOLTE, ASSISTANT DIRECTOR FOR NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATON

Mr. STOLTE. Thank you, Mr. Chairman.

I am Dennis Stolte representing the American Farm Bureau, the Nation's largest farm and ranch organization. I am here today to testify in favor of H.R. 2921. I have a policy statement included in my written statement from our organization which has been longstanding in support of the intent of this bill.

The American Farm Bureau supports H.R. 2921, a bill by Representative Strang. H.R. 2921 would require the Secretary of the Interior to grant free easements for irrigation and livestock watering systems which cross Federal lands if such systems were established prior to October 21, 1976.

Although we would certainly prefer legislation that would exempt all water conveyance systems from permit requirements of FLPMA, H.R. 2921 is a compromise which appears to be the best opportunity at this time to deal with this important water rights problem. As you said, Mr. Chairman, earlier, we realized that additional efforts will probably have to be made later to address the impact of FLPMA on other water users.

I would like to forego the reading of the remainder of my statement and simply close. I do not think there is anything there that has not been said already.

The claim has been made that we have time to deal with this problem if we do not get it done this session, and in support of that statement is the fact that there currently is a moratorium on enforcement by the BLM and Forest Service. That may be the case in Colorado, Mr. Chairman, but I am submitting with my statement two pages of water users in the State of Utah which are predominantly farmers and ranchers, some municipalities, that are now being forced to pay fees by those two Federal agencies.

I do not believe we have time to deal with this issue next year. I think H.R. 2921 is a real good step towards resolving the issue as far as we can this year, and I think it is absolutely necessary that we favorably consider this legislation in this Congress.

Thank you.

[The prepared statement of Mr. Stolte follows:]

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE PUBLIC LANDS, RESERVED WATER AND
RESOURCE CONSERVATION SUBCOMMITTEE
OF THE SENATE ENERGY COMMITTEE
REGARDING H.R. 2921, RIGHTS-OF-WAY FOR IRRIGATION CONVEYANCE SYSTEMS
ON FEDERAL LANDS

Presented by Dennis C. Stolte

September 23, 1986

The American Farm Bureau is the nation's largest organization of farmers and ranchers. For the last several years, the delegates to our annual convention have reaffirmed the following policy statements relating to water rights and water rights-of-way:

> "The right to use water is a property right which should not be taken from an owner without due process of law and just compensation. We support the present system of appropriation of water rights through state law and oppose any federal domination or preemption of state water resource distribution formulas...
>
> "We recommend legislation to require all federal agencies or commissions to comply with applicable state laws and prohibit the requirement of permits on existing ditches on federal lands..."

The American Farm Bureau Federation supports H.R. 2921, a bill by Representative Strang. H.R. 2921 would require the Secretary of Interior to grant free easements for irrigation or livestock watering systems which cross federal lands if such systems were established prior to October 21, 1976. Aithough we would prefer legislation to exempt all water conveyance systems from the permit requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), H.R. 2921 is a compromise which appears to be the best opportunity at this time to deal with this important water rights problem.

More than 50 percent of the land area of the 17 western states is controlled by the federal government. Much of the water used for irrigation originates from snowmelt and rainfall in high-altitude Forest Service and BLM lands. As a result, many of the irrigation systems developed in the West originate on or cross federal lands. Because many irrigation systems were developed long before federal filing fees and permits were required, many of these systems are not currently documented.

Some public land supervisors now claim that irrigation ditches and structures are subject to permits and fees under the Federal Land Policy and Management Act of 1976. About 10,000 miles of irrigation ditches and diversion structures could be affected. Many of these systems were in existence long before (FLPMA).

Water users who refuse to comply are considered trespassers by the BLM and Forest Service. Some farmers and ranchers have been threatened with termination of their ditch right-of-way and the subsequent loss of their long-established water right. In addition, BLM and Forest Service have informed right-of-way holders that their ditch right-of-way cannot be transferred with their water right. Any new owner of the property and the water right is required to get a new permit from the federal government when the land is sold.

Farm Bureau believes that these actions represent interference by the federal government in individual water rights. It is imperative that federal laws relating to the use of water respect private water rights which have been developed under state law. H.R. 2921 would be a major positive step toward protecting long-established water rights from the permit requirements of FLPMA.

We wish to thank Representative Mike Strang, Senator Bill Armstrong, Senator Malcolm Wallop and members of this committee for their efforts on this important issue.

DCNA
UTFB 002 IL

TO: DENNIS STOLTE
AMERICAN FARM BUREAU, WASHINGTON, D.C.

FROM: C. BOOTH WALLENTINE, EXECUTIVE VICE PRESIDENT
UTAH FARM BUREAU FEDERATION

SUBJECT: RIGHTS OF WAY FEES FOR IRRIGATION COMPANIES AND USERS

HERE IS THE INFORMATION I HAVE BEEN ABLE TO FIND TO THIS TIME.

FOREST SERVICE:

1. EPHRIAM IRRIGATION CO., % ART KING, 447 SO. 200 E., EPHRIAM
(FOREST SERVICE) UT 84627, PHONE (801)283-4539
FEE WAS ASSESSED, COMPANY PROTESTED DUE TO INVOLVEMENT BY BUREAU OF RECLAMATION IN CONSTRUCTION OF IRRIGATION SYSTEM. FEES WERE WITHDRAWN.

2. KENT ANDERSON (INDIVIDUAL), EPHRIAM, UT 84627, PHONE 283-4590
MINIMUM FEE OF $25.00 (FOREST SERVICE)

3. SHEEP CREEK IRRIGATION CO., %ALBERT NEFF, MANILA, UT 84046
(NO PHONE)
$25.00 FEE, WILL TO TO $9.00/ACRE

4. GREENDALE IRRIGATION CO. %CRAIG COLLETT, FLAMING GORGE LODGE,
DUTCH JOHN, UT 84023
$25.00 FEE, WILL GO TO $9.00/ACRE

5. PINE VALLEY IRRIGATION CO. %LYNN GARDNER, 84 SO. 500 E.,
ST. GEORGE, UT 84770
$25.00 FEE

6. NEW HARMONY RESERVOIR, NEW HARMONY, UT 84757
$30.00 FEE

7. BICKNELL CITY WATER CO., BICKNELL, UT 84715
$82.00 FEE

8. SAND CREEK IRRIGATION CO., %PHEDA HOLLINGER, TORREY, UT 84775
$25.00 FEE

9. DAY IRRIGATION CO., 252 SO. 2ND E., MOAB, UT 84532, PHONE 259-6219
$25.00 FEE

10. KENNETH PARTRIDGE, P.O. BOX 248, LASAL, UT 84530 - NO PHONE
$25.00 FEE

11. PLEASANT GROVE CITY, 35 SO. MAIN, PLEASANT GROVE, UT 84062
$25.00 FEE

12. RESIDENTIAL PROPERTY, INC., 5250 SO. 300 W., SUITE 100, MURRAY
UT 84107
$25.00 FEE

13. GRANTSVILLE, IRRIGATION CO., 295 SO. WILLOW, GRANTSVILLE, UT 84029
$50.00 FEE

14. JEFF NIELSEN, 4651 RIVERSIDE, MURRAY, UT 84123
$25.00 FEE

PHONE NUMBERS ARE VERY DIFFICULT TO GET ON SHORT NOTICE.

FOREST SERVICE OFFICIALS HAVE A THREE-LEVEL SCHEDULE THAT THEY ARE NOW IN THE PROCESS OF IMPLEMENTING. IT WILL BE $6.00 PER ACRE, $9.00 PER ACRE, AND $15.00 PER ACRE, BASED ON STUDIES OF SIMILAR LEASE OR RIGHT OF WAY FEES ON COMPARABLE PRIVATE PROPERTY. AT THIS TIME, MOST USERS ARE AT THE MINIMUM FEE OF $25.00, WITH THE FEES FOR MANY MUNICIPALITIES HAVING BEEN WAIVED. OUR CALLS HAVE APPARENTLY PROMPTED FOREST OFFICIALS TO CHANGE THIS POLICY, BECAUSE THEY TOLD ME THEY WILL SOON START ASSESSING FEES TO MUNICIPAL USERS TO PREVENT CHARGES OF DISCRIMINATION.

THE BLM WAS LESS HELPFUL. THEY DO NOT CARRY THE FEE ASSESSMENT ON THEIR STATE OFFICE RECORDS, AND NO PHONE NUMBERS. HERE FOLLOWS A RANDOM LIST OF JUST A SAMPLE OF PERMITS ISSUED FOR RIGHTS OF WAY ON BLM PROPERTY FOR "WATER CONVEYANCES."

1. KEYSER ALUMINUM & CHEMICAL, 300 LAKESIDE DRIVE, OAKLAND, CA 94643

2. HUNTINGTON CITY, P O BOX 126, HUNTINGTON, UT 84528

3. SAN JUAN WATER CONSERVANCY DIST., BOX 218, BLANDING, UT 84511

4. ROBERT YARDLEY, BOX 270, BEAVER, UT 84713

5. EMERY CITY, BOX 108, EMERY, UT 84522

6. DARRELL JOHNSON, BOX 28, ST. JOHN, UT 84069

7. FERRON CITY, FERRON, UT 84523

8. ALBERT HYATT, CLAWSON, UT 84516

9. PARAGONAH CITY, PARAGONAH, UT 84760

10. AMEX MAGNESIUM CO., 238 NO. 2200 W., SALT LAKE CITY, UT 84116

11. STEPHEN DOUDY, BOX 87, WENDOVER, UT 84083

BLM ADVISES THAT SOME, OR PERHAPS ALL, OF THE MUNICIPALITIES ARE PRESENTLY EXEMPTED FROM THE ASSESSMENT, ALTHOUGH THEY MUST GET A PERMIT. SORRY I CAN'T TELL YOU WHAT THE FEES ARE , BUT THE EARLIER CITED PER ACRE RATE WAS DEVELOPED BY BLM AND IS NOW BEING ADOPTED BY THE FOREST SERVICE.

038
03/04/86 14:48 IN
03/04/86 14:49 OUT

Senator WALLOP. Thank you.

Let me counsel you and Mr. Balcomb and Mr. Knott and others who are in favor of the passage of this legislation not to back off after it passes and your immediate problem is taken care of, because these other folks need that support. In fact, as I view it in listening to what Larry, Mr. Carlson, and others have said, there is a taking of value that is implicit in the passage of this legislation, that you as a rancher have a water right that has value while you are making money in agriculture. But some are not able to, and pretty soon one of your values is lost because of the lack of transferability implicit in the narrow focus of this legislation.

So while you may have solved your immediate problem in terms of getting water for your agricultural purposes today, your long-run problem is perhaps even bigger. So they need your help to maintain this. We will have as strong a language as I can devise in that report insisting that there is more to this problem than has been solved by the passage of this legislation.

Let me ask you, Mr. Carlson, does the Forest Service take the position that Pueblo, in your example, has no right-of-way, or no free right-of-way? Can they block the water in its entirety, is what I am asking.

Mr. CARLSON. The sale has not taken place yet, but it is my understanding from another case in which I am involved that the Forest Service takes the position that the right-of-way is forfeited and that they are entitled to ask for a declaration of that in court. They then say you have to start over and go through new permitting for an ability to get a right-of-way under FLPMA for existing structures, some of which have been in the forest for 80 years.

Senator WALLOP. Would you be good enough, to work with Committee staff on drafting language for the report which basically states that we do not believe that rights-of-way are forfeited; that they have some negotiation in terms of compensation, but that they are not forfeited. I am not sure just exactly what that would be, but I know what I want to achieve out of it. You might think about that.

Mr. CARLSON. Should I contact Mr. Bevinetto?

Senator WALLOP. Yes, if you would, please.

Gentlemen, thank you very much. I appreciate your coming here today.

Mr. CARLSON. Thank you, Senator.

[The statement of Mayor Kelly Ohlson, Fort Collins, CO, follows:]

CITY OF FORT COLLINS
OFFICE OF THE MAYOR

September 19, 1986

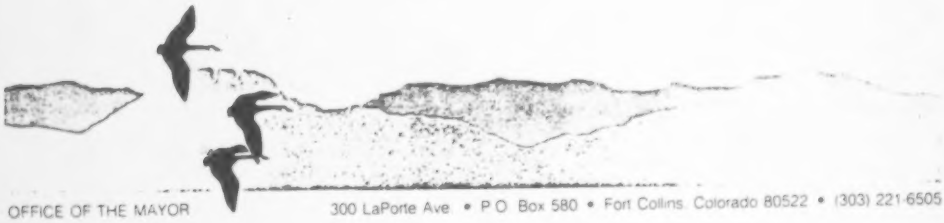
Senator Malcolm Wallop, Chairman
Subcommittee on Public Lands, Reserved Water and
Resources Conservation
South Dirksen, #308
Washington, D. C. 20510

Dear Senator Wallop and Subcommittee Members:

Please accept this letter as the written testimony of the City of Fort Collins concerning H.R. 2921 scheduled for hearing on September 23, 1986.

Fort Collins supports the effort to amend the 1976 Federal Land Policy and Management Act (FLPMA) to confirm the rights-of-way for water conveyances across federal lands existing prior to the passage of FLPMA. H. R. 2921 as it stands confirms those rights-of-way for ditches used solely for agricultural uses. We believe that it should be amended by the Senate to affirm the rights-of-way for ditches conveying water for all uses recognized by State law.

Here in northern Colorado, ditches were constructed on public lands beginning in the late nineteenth century primarily for the purpose of providing irrigation water to the rich farmlands in what are now Larimer and Weld Counties. For much of the history of the West, construction of these water systems was encouraged as national policy in order to support settlement of the West. As that settlement continues to take place and farmland is converted to other uses, the agricultural water gradually and naturally transfers to municipal and industrial uses. In order for this transition to occur in a timely and orderly manner, Fort Collins and other cities have implemented policies which require that land developed and annexed for municipal uses be accompanied by sufficient water rights to provide for the new use of that land including residential, lawn irrigation, and industrial uses. As a result, the pre-FLPMA ditches now serve both agricultural and municipal uses or may have been converted entirely to municipal use. We believe that the rights-of-way for ditches which existed prior to FLPMA should continue to be recognized without any additional permits, fees, or conditions for any water use recognized under State water law.



OFFICE OF THE MAYOR 300 LaPorte Ave • P.O. Box 580 • Fort Collins, Colorado 80522 • (303) 221-6505

The City of Fort Collins owns rights to water conveyed by ditches which cross federal lands, some solely for municipal use and others for both agricultural and municipal uses. Most of the water rights involved pre-date the formation of the National Forest system. Allowing new conditions to be attached to the rights-of-way which exist for the purpose of exercising those water rights may result in injury to those rights, may add substantial additional expense to the use of that water, and will interfere with the orderly transfer of water that now takes place under Colorado law.

INJURY TO WATER RIGHTS In order for ditches to carry the full water right allotment, they must be maintained to their full capacity. The Forest Service has indicated its intention of using the FLPMA special use permits for ditches to resrict or prevent access for maintenance and to require maintenance of minimum flows where no such requirement has existed. Either of these permit requirements would result in injury to water rights which have existed under state law since the turn of the century.

ADDITIONAL EXPENSE Special use permit conditions can be extremely expensive, arbitrary, and damaging to the use of water. In our experience with special use permits for other structures, onerous and unreasonable conditions have been required which added 50% to the cost of a project. These permit conditions provided very little benefit to the permitting agency, none to the project, and the results could have been accomplished for much less. In addition, the special use permit was used to require the placement of outdoor restroom facilities in a location that is likely to lead to contamination of the City's water supply. These kinds of requirements add large and unnecessary costs to the water supplies of Fort Collins residents.

WATER RIGHTS TRANSFERS As it stands, H. R. 2921 would interfere with the transfer of water rights from agricultural to municipal or industrial use, since an agricultural right-of-way could not be transferred to another user. This would have the affect of depressing the value of agricultural water since other users could not be guaranteed the right to use the right-of-way if the water right was purchased. As a result, the price of a valuable commodity owned by farmers would deflate, and the need to construct water projects to serve the needs of other users would accelerate. This interference with the exercise of existing water rights in Northern Colorado will have serious effects on the regional economy. The intent of H. R. 2921 to protect only agricultural users also will not be served, since many ditches serve a mix of users.

We are attaching a revised version of the amendment to H. R. 2921 which we believe will solve the problems inherent in the bill as passed by the House. We hope that you will understand the importance of these changes to the people in our area. City leaders have for many years planned very carefully

to assure adequate supplies of good quality water for the residents of today and of the future. The imposition of the kinds of terms and conditions which are included in special use permits will substantially alter the availability and cost of those water supplies. The system of water exchanges and transfers on which the area depends to make the best possible use of a limited resource will also be disrupted.

Thank you very much for your attention to this very important issue.

Yours truly,

Mayor Kelly Ohlson
City of Fort Collins

CC: Senator William Armstrong
Senator Gary Hart
Congressman Hank Brown

H.R. 2921

AN ACT

To authorize the Secretary of Agriculture and Secretary of Interior to confirm permanent easements for water conveyance systems in order to resolve title claims arising under Acts in effect prior to and repealed by the Federal Land Policy and Management Act of 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) For purposes of this Act, the term "the Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761).

(b) For purposes of this Act, the term "Secretary" means (1) the Secretary of Agriculture, with respect to Federal lands within the national forest system, and (2) the Secretary of the Interior, with respect to Federal lands under the jurisdiction of the Bureau of Land Management or National Park Service.

(c) For purposes of this Act, the term "Federal lands" means all land in federal ownership (1) within the National Forest System and (2) under the jurisdiction of the Bureau of Land Management or National Park Service.

Section 2. (a) Section 501 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1) Upon receipt of a written notification pursuant to paragraph (2) of this subsection from any person meeting the requirements of this subsection, the Secretary shall confirm that a permanent easement exists, without a requirement for reimbursement, additional conditions, or federal action, for a water system as described in subsection (a)(1) of this section, including operation and maintenance thereof, traversing Federal lands, constructed and in operation, placed into operation, or authorized prior to October 21, 1976, if--

"(A) the traversed Federal lands are in a State where the appropriation doctrine governs the ownership of water rights;

"(B) at the time of written notification the water system is used for purposes recognized by state law;

"(C) the facilities comprising such system have not been abandoned under state law;

"(D) the system has a valid existing water right under State law;

"(E) a recordable survey describing the location of the system is provided to the Secretary; and

"(F) the notification is made on or before December 31, 1996.

"(2)(A) Nothing in this Act shall be construed as delimiting (diminishing or reducing) any grants made under any previous Act. To the extent any such previous grant or

right-of-way or right of use granted or established for a water system on Federal lands by any previous Act has not been terminated by final, non-reviewable administrative action or final judgment of a court of competent jurisdiction, it shall remain in full force and effect and shall include all uses of water allowed under state law. Such prior grant shall remaining full force and effect unless an owner thereof notifies the Secretary that such owner elects to have a water system on such right-of-way governed by the provisions of this subsection and makes a written notification pursuant to this subsection, in which case upon the confirmation of an easement pursuant to this subsection such previous grant shall be deemed to have been relinquished and shall terminate.

"(B) Easements confirmed under this subsection, as well as rights-of-way issued, granted, or permitted prior to October 21, 1976, shall be fully transferable without the imposition of fees or new conditions or stipulations at the time of transfer. The transferee shall notify the Secretary of any transfer.

"(C) Easements confirmed under the authority of this subsection shall include all changes or modifications to the facilities in existence or authorized as of October 21, 1976, the date of enactment of this Act.

"(D) Any future authorization of an extension or enlargement of water systems on Federal lands after October 21, 1976, except those undertaken for safety purposes or to

complete construction of facilities required for use of water rights under state law, shall require the issuance of a separate authorization under applicable law; provided, that no additional authorization shall be required for the repair, reconstruction, or maintenance of facilities in existence as of October 21, 1976.

"(3)(A) The Secretary may not terminate or suspend an easement confirmed pursuant to this subsection in accordance with the procedural and other provisions of section 506 of this Act.

"(B) Nothing in this subsection shall be deemed to be an assertion by the United States of any right or claim with regard to the reservation, acquisition, or use of water. Nothing in this subsection shall be deemed to confer on the Secretary any power or authority to regulate or control in any manner the appropriation, diversion, or use of water for any purpose or to require the conveyance, transfer or relinquishment to the United States or any other party of any right or claim to the appropriation, diversion, or use of water.

"(C) In the event a water system upon an easement confirmed pursuant to this subsection is allowed to deteriorate to the point of an imminent and substantial danger to persons or property and the owner of the water facilities, after consultation with the Secretary, refuses to perform the repair and maintenance necessary to remove the danger to persons or property, the Secretary shall have the right to undertake such

repair and maintenance of the system, and to assess the owner for the costs of such repair and maintenance.

Section 3. Section 504 of the Act is amended by inserting before the end of subsection (f) "or for emergency repair work necessary for those rights-of-way authorized under section 501(c) of the Act."

Senator WALLOP. Next on S. 2442 and H.R. 4811, Mr. Burt Eller, Public Lands Council of the National Cattlemen's Association, and the Arizona Cattle Growers' Association; Mr. Brock Evans of the National Audubon Society; and Ms. Debbie Sease of the Sierra Club.

Mr. Eller, good morning. Please proceed.

STATEMENT OF J. BURTON ELLER, JR., VICE PRESIDENT, GOVERNMENT AFFAIRS, NATIONAL CATTLEMEN'S ASSOCIATION

Mr. ELLER. Mr. Chairman, the livestock organizations I represent today compliment the Secretary of the Interior and BLM for that land transfer that created the proposed San Pedro area. As we understand it, both parties were satisfied, and that is what a land swap should accomplish.

We also commend Senators DeConcini and Goldwater for a bill that we think is extremely workable in that situation. It requires a management plan. It asks that multiple use management be looked at. But we are then concerned about its companion bill, and I might add, the substitute bill not the original bill, but the substitute bill 4811 from the House side that then proceeds to tell the Secretary in detail how to manage those lands.

The livestock industry is greatly concerned about the legislative exclusion of grazing on the San Pedro. This is a surprising and unnecessary precedent for Congress to set. Livestock producers are experts in range management and are good stewards of the public lands they use. Their livelihood depends on it.

The Bureau of Land Management pays experts to develop and implement public use systems and multiple use plans for those same public lands. Is Congress now going to step in and say "we, the Congress, know best how to manage the Nation's public lands'?

Further, the House bill eliminates livestock grazing on the San Pedro to, according to the bill's committee report for the House side, "an opportunity for a study, evaluation, and monitoring of riparian areas in the absence of livestock grazing." Why "in the absence of livestock grazing"?

Any valid study makes comparison of comparable things. Therefore, at least some of the San Pedro must be grazed under good management guidelines in order to make any valid conclusions on the remaining nongrazed portion.

Finally, Mr. Chairman, we must reiterate that the San Pedro area was not mismanaged. It was not overgrazed, nor were its riparian values threatened when it was acquired from private ownership. In fact, the House report says "desert riparian habitat in good condition". This leads us to question why the harsh, irrelevant mandates in H.R. 4811. Such arbitrary and capricious issues must be addressed before such a bill becomes law.

Mr. Chairman, attached to my testimony are two letters very important to this hearing. They come from the Arizona Cattle Growers Association and the Greenlee County (Arizona) Cattle Growers Association. I ask that they become a part of this hearing record.

Senator WALLOP. By all means.

Mr. ELLER. That is my testimony. Thank you.

[The prepared statement of Mr. Eller follows:]

PUBLIC LANDS COUNCIL

"A Western Livestock Public Land User Organization"

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HERB METZGER
TYE S. MOORE
ROB FLOURNOY
DEAN RHOADS
NICK THEOS
JOHN WEBER
Member at Large
GERALD TEWS
National Cattlemen's Association
JAMES COURTNEY
National Wool Growers Association
NORM PALM
Association of National Grasslands
BRYCE BOWMAN

Member States:
Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
North Dakota
Oregon
South Dakota
Utah
Washington
Wyoming

STATEMENT

of the

Public Lands Council

National Cattlemen's Association

National Wool Growers Association

Regarding H.R.4811 and S.2442

THE SAN PEDRO RIPARIAN NATIONAL CONSERVATION AREA

Before the

Subcommittee on Public Lands, Reserved Water and Resource Conservation

Senate Committee on Energy and Natural Resources

September 23, 1986

J. Burton Eller, Jr., Vice President Government Affairs

National Cattlemen's Association

Mr. Chairman, the organizations I represent today compliment the Secretary of the Interior and the Bureau of Land Management for the manner in which they accomplished the land exchange creating the proposed San Pedro Riparian National Conservation Area. Both the private landowner and the Federal government were willing to make the trade and reportedly pleased with the results.

We commend Senators DeConcini and Goldwater for introducing S.2442 and for their general approach to the use and management of this proposed area. The Senate bill has our enthusiastic support.

Both bills, S.2442 and H.R.4811, instruct the Secretary to manage the area consistent with the Federal Land Policy and Management Act of 1976, and in a manner that conserves, protects and enhances the riparian, wildlife, archaeological, paleontological, scientific, cultural, educational and recreation resources of the conservation area.

The House bill (H.R.4811), unfortunately, then proceeds to tell the Secretary in detail how to manage and what restrictions he must impose. The livestock industry is greatly concerned with the legislated exclusion of grazing on the San Pedro area. This is a surprising and unnecessary precedent for Congress to set. Livestock producers are experts in range management, and are good stewards of the public lands they use; their livelihood depends on it! The Bureau of Land Management pays experts to develop and implement multiple use plans and management systems for those same public lands. Is Congress now going to step in and say, "We (Congress) know best how to manage the nation's public lands?"

Further, the House bill eliminates livestock grazing to, according to the bill's committee report, "provide an opportunity for the study, evaluation and monitoring of riparian areas in the absence of livestock

grazing". Why in the absence of grazing? Any valid study makes comparisons of comparable things. Therefore, at least some of the San Pedro must be grazed under good management guidelines in order to make any valid conclusions on the non-grazed portion.

Finally, Mr. Chairman, we must reiterate that the San Pedro area was not mismanaged, overgrazed nor were its riparian values threatened when it was acquired from private ownership. The fact that it has been grazed for many years and is now, according to the House Report 99-773, "desert riparian habitat in good condition", leads us to ask why the harsh, irrelevant mandates in H.R.4811? Such arbitrary and capricious issues must be addressed before such a bill becomes law.

Mr. Chairman, attached to my testimony are two letters very important to this hearing. They come from the Arizona Cattle Growers Association, and the Greenlee County (Arizona) Cattle Growers Association. I ask they become a part of this hearing record.

Thank you, Mr. Chairman.

Attachments

September 9, 1986

Jeff Menges, President
Greenlee County Cattle Growers Assoc.
P.O. Box 792
Morenci, AZ 85540

Dear Senator

With regards to HR 4811 concerning the establishment of the San Pedro Riparian National Conservation Area, a bill introduced by our own Congressman Jim Kolbe, we would like to express some concerns over that portion of the bill which calls for the total exclusion of grazing in the area for 15 years.

We feel that if that language is not removed before the bill passes, it will set an unfair precedent for all such conservation areas. We are now learning that properly managed grazing is a necessary part of the restoration of our ranges.

Since the San Pedro Area was first traded for, we have felt that it would be an ideal area to set up a model of the multiple use concept--wildlife management, recreation, fire management, gravel, crop production, and livestock production through proper grazing management techniques.

In the past, even with grazing, this area has been particularly susceptible to range fires, mostly started by illegal aliens coming up from Mexico. If grazing is removed, we're sure this problem will compound.

Furthermore, many of the members of our association have riparian vegetation on their grazing allotments and are in the process of fencing those areas and entering various deferred grazing programs within those areas. If this bill is passed in its present form, I'm sure that many of the ranchers will reconsider their riparian management proposals for fear that grazing will totally be excluded once the fences are complete.

Please consider our concerns. We're sure that there is a solution to this that can be acceptable to everyone.

Thanks for all your support to Agriculture.

Jeff Menges,

Jeff Menges

President,
Greenlee County Cattle Growers Association

Bill Bowman
President, Sonoita
Jim Webb
1st Vice President, Phoenix
Bill McGibbon
2nd Vice President, Sierra Vista
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Earl Morrell*, Globe
Ernest Browning*, Willcox
Ray Cowden, Phoenix
Ted Lee Treichler
Brad Stewart, Camp Verde
Frank "Pancho" Boice*, Tucson
Jungo Butler, Springerville
Duane Miller, Sedona
Joe Lane, Willcox
Fred T. Boice, Tucson
Herb Metzger, Flagstaff
Walter Armer, Tucson
John Andersen, Peoria
*Deceased

Arizona Cattle Growers' Association

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September 3, 1986

Senator Barry Goldwater
353 Russell Building
Washington, D.C. 20510

RE: San Pedro Riparian National Conservation Area

Dear Senator Goldwater:

We in the livestock grazing industry have great concerns about the language of HR 4811, the bill before Congress that creates the above named area. The provision, legislatively placing a fifteen year moratorium on livestock grazing, we feel is unwise. The area has been grazed for many years and is rated in good condition, so to place a ban on grazing in the law doesn't seem to have any justification.

There are three major concerns that we have, one being that legislation banning grazing in riparian areas such as this one, could well set a precedent for future legislation that will be forthcoming when Congress again addresses a Public Rangelands bill. We all recognize that there will be many attempts to ban grazing on as many areas as possible by the anti-grazing groups within our society. As you know, riparian areas received a great deal of attention during the hearings on the last Omnibus Rangeland Bill that failed to get introduced last fall.

The second concern is that we dislike seeing specific restrictions on the use of public lands being mandated by legislation. We feel that the land management agency should have the flexibility to use whatever tools are available to maintain the area in as good a condition as possible. This proposed legislation would remove one tool from their management alternatives.

The third concern is that the moratorium on grazing in this riparian area could well be detrimental to the condition of the area. There is growing popular acceptance of a concept of land management known as Holistic Resource Management. This philosophy, also known as the Savory Method (after its originator Alan Savory), states that domestic livestock grazing is a necessary practice to create the required herd impact or hoof action to the plant community to maintain it in a healthy and viable condition. Many people from all interest groups are paying more and more attention to Savory's teachings, as the resulting benefits to rangelands have been proven. Again, the fact that this existing riparian area has been grazed till now and is in good health, would seem to support this philosophy.

We feel it would be very unproductive to legislate a ban on livestock grazing when a management plan could accomplish the same objective, if so desired. The agencies need to have as much flexibility as possible to carry out their responsibilities and reach their mandated objectives.

The Arizona Cattle Growers' Association encourages you to seek removal of that portion of HR 4811 that places a moratorium on livestock grazing.

Thank you for your consideration of this request.

Sincerely,

Bob Bowman

Bob Bowman
President

BB:sln

CC: Senator James McClure
Chairman, Energy and Natural Resources

Senator Malcolm Wallop
Chairman, Sub-Committee
Public Lands, Reserved Water and Resources Conservation

Senator WALLOP. Thank you, Mr. Eller.
Brock.

STATEMENT OF BROCK EVANS, VICE PRESIDENT, NATIONAL ISSUES, NATIONAL AUDUBON SOCIETY

Mr. EVANS. Thank you, Mr. Chairman.

I guess the Audubon Society is before you twice today, and you can see how our interests go across the country. I am here in support of the legislation before you for the San Pedro River. I work on it extensively. I have explored the area this summer. It is a truly unique place. I recommend it to you, if you get a chance to get out that way.

We also want to commend the Bureau of Land Management for its exchange here. I point out that this is all Federal land we are dealing with here. Luckily we do not have the problem you pointed out a little bit earlier, and we certainly commend the Arizona delegation for putting all this together.

This is a very important area to us, Mr. Chairman, because of its unique wildlife habitat on this kind of land: 210 species of birds that are in the area, approximately one-third of the United States population of grey hawks occur along the San Pedro; it is a very unique kind of riparian habitat in an otherwise arrid land.

I think we all realize that riparian communities in Arizona are an especially scarce and declining natural resource. We estimate that only about 15 percent of all of Arizona's original riparian acreage remains in its natural state. The intent of the legislation makes it very plain that it is to assure the protection of educational, recreational, scientific riparian, wildlife, archaeological, and paleontological resources, and that is what I want to emphasize here.

While we generally support the intent of the Senate bill and its companion House bill, we think it is important to clarify a few things to reinforce this kind of intent. Let us highlight one or two briefly and then end.

First, the size and boundaries are now limited to 43,000 acres. We think it very important to permit, if you would, Mr. Chairman, the Secretary to acquire additional lands if possible. That is because the nearby Huachuca Mountains also constitute a very important habitat, and professionals have said that if we could we should preserve a corridor there. We urge that the Secretary have authority to acquire related lands as appropriate, not by condemnation but if they are offered and available. We would urge you to consider that.

Secondly, in terms of the management of the area that my colleague next to me just mentioned and the other uses, I guess we would have to support the exclusion of grazing for a 15-year test period, a moratorium that occurs in the House bill. We urge you to consider that here. This is because we respectfully disagree. We think it has been well documented that grazing can have a severe impact on wildlife values in riparian areas. The purpose of this area is to remain for all the intents I mentioned earlier, and not for grazing.

We do not think it sets a precedent. This is a special case for a special kind of area, and we would like to ease the fears of my colleague next to me on that point, but we do think it is important.

We also disagree with the Bureau of Land Management who said it should be open to mineral leasing, once again for the reason that this is a special area not to be managed for the normal BLM purposes, but for the special and unique kind of wildlife values.

Finally, I just want to echo what Nat Reed said earlier. You and I have known Nat for a long time, and he is right. Many great achievements of our conservation movement have been enacted in the last days of a Congress. We think this is one of them. It is a unique kind of an area. It is a special thing for the Bureau of Land Management, a special thing that we are asking them to do.

We think they can do a good job, and that is why we are supporting their management. A lot of work has gone into this already. We urge you to give it all the attention you can in these last days.

Thank you.

[The prepared statement of Mr. Evans follows:]

National Audubon Society

NATIONAL CAPITAL OFFICE 801 PENNSYLVANIA AVENUE, S.E. WASHINGTON, D.C. 20003 (202) 547-9009

STATEMENT OF BROCK EVANS

VICE PRESIDENT FOR NATIONAL ISSUES

BEFORE THE SENATE ENERGY SUBCOMMITTEE ON PUBLIC LANDS

REGARDING S. 2442, ESTABLISHING THE SAN PEDRO

RIPARIAN NATIONAL CONSERVATION AREA, ARIZONA

WASHINGTON, D.C., SEPTEMBER 23, 1986

Mr. Chairman, thank you for the opportunity to appear here today and to present the views of the National Audubon Society on this legislation, and its companion House Bill H.R. 4811, which affects an area of great importance to our members and chapters in the state of Arizona -- the San Pedro River in the southern part of the state.

S. 2442 and H.R. 4811, although different in some respects, each designate approximately a 31 mile stretch of the San Pedro and certain lands surrounding it as the San Pedro Riparian National Conservation Area, to be administered by the Bureau of Land Management. The language of each bill makes plain the intent, to assure the protection of educational, recreational, scientific, riparian, wildlife, archaeological, and paleontological resources. We generally support this legislation, and commend not only Senators DeConcini and Goldwater, but also members of the Arizona House Delegation who sponsored the similar bill, and finally, the Bureau of Land Management itself for pursuing and consummating the land trade with the Tenneco Corporation which permitted public ownership of these lands in the first place. We would not be here at all if it were not for that action which was very much in the public interest.

From the standpoint of the National Audubon Society, the San Pedro River with its associated riparian lands is a rare, perhaps unique, resource in this part of the world. Approximately 210 species of birds occur in the area, and it provides nesting, migratory, or wintering habitat for at least 20 species of diurnal raptors. These include the Coopers Hawk, Black Hawk, Zone-Tail Hawk, Harris Hawk, Mississippi Kite and Gray Hawk. Approximately one-third of the United States population of Gray Hawks occur along the San Pedro and comprise the only substantial nesting population of this species in the U.S. The majority of the breeding Raptors found on the San Pedro are principally or entirely dependent on riparian habitat for nesting sites. Reduction in quality or quantity of the riparian community in the San Pedro system would result in significant declines in the populations of these species.

I think all realize that riparian communities in Arizona are an especially scarce and declining natural resource. It is estimated that only about 15 percent of all Arizona's original riparian acreage remains in its natural form. The cottonwood willow riparian habitat type comprises only .003 percent of the total vegetative cover in the state of Arizona. Although we cannot say with any assurance that endangered species now live in the precise area covered by this legislation, the following endangered species have occurred along the San Pedro historically and their habitats still exist: Ocelot, Jaguarundi, and Peregine Falcon.

As others have pointed out, the area is also of enormous ecological, educational, and recreational interests. It especially offers opportunities for nature study, hiking, and solitude in an unique environment. Having been to visit the area personally, I can attest to the unique experiences this area can afford.

While we generally support both H.R. 4811 and S. 2442, and their whole approach to management of the San Pedro Area, we believe it is necessary to clarify and emphasize the purpose for which this special designation is being created if we are to have real protection of this significant resource of national importance. Therefore, we would suggest the following changes or clarifications:

- Size and Boundaries. S. 2442 creates an area of not more than 60,000 acres; H.R. 4811 is limited to only "approximately 43,000 acres," that is the area of the original purchase. However, all evidence is that there are significant lands adjoining the lands purchased which are biologically or otherwise a part of the San Pedro River ecosystem, and contain valuable wildlife habitat. We feel the Secretary should have authority to acquire these lands as appropriate. Especially valuable would be the future possibility of obtaining and managing for wildlife a corridor of land extending westward to the nearby Huachuca Mountains. This would permit free passage back and forth for the incredibly diverse mammalian communities in the mountains to the river and back. We recommend that the Secretary have authority to acquire these and related lands as appropriate.

- Management of Area. Section 2(a)(2) should be clarified by adding the words "ecosystem, aquatic," after the word "riparian" in S. 2442. The reason for adding the word "ecosystem" makes it plain that it is the entire ecosystem related to the riparian values that is to be protected here. The reason for the word "aquatic" is simply to clarify the intent.

- Section 2(b) "Other Uses." This section of S. 2442 should be strengthened by making it plain that the Secretary should specifically prohibit grazing, or at least implement a 15 year moratorium, as provided by Section 203 of H.R. 4811. It is well documented that grazing can and does have a severe impact on wildlife values in many riparian areas across the west. If this area is to be managed for special purposes and we are to go to the trouble of giving it a special designation for its unique riparian values in an arid state, then we feel that grazing is inappropriate. Granted, the Secretary could do this by regulation; but we feel that the political pressure will be too great later on if it is not required in the statue itself. We support Section 202 of H.R. 4811 which permits use of motorized vehicles only on roads specifically designated as part of the management plan, and urge that S. 2442 be modified accordingly.

- Acquisition of Lands. We feel that the Secretary should also be allowed to acquire lands by donation, as well as by exchange or purchase, as appropriate.

These are some of the major changes or clarifications we would offer at this time. Again, we feel that the San Pedro River and its associated lands in this stretch are truly a rare, almost unique, resource, not only in Arizona, but indeed in the United States. Thanks to the quick action of the Bureau of Land Management and of the Arizona Congressional Delegation, we have a chance here to give it the recognition and protection it deserves. We look forward to working with you to accomplish this goal. Thank you.

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Senator WALLOP. Thank you.
Ms. Sease.

STATEMENT OF DEBBIE SEASE, WASHINGTON REPRESENTATIVE, SIERRA CLUB, ON BEHALF OF THE SIERRA CLUB AND THE WILDERNESS SOCIETY

Ms. SEASE. Thank you, Mr. Chairman.

Can you hear me? I am joined today in my statement by the Wilderness Society and the American Rivers Conservation Council who wish to be associated with the views expressed in my statement. I will submit my written statement for the record and briefly summarize.

We support the intent of S. 2442 and H.R. 4811. Having grown up in the Southwest, I developed an appreciation of what a magical quality water can create in arrid environments. Those riparian areas are tremendously threatened. In my lifetime, I have seen areas deteriorate and disappear. But perhaps the most telling example of the riparian destruction did not occur in my lifetime in the Rio Puerco in New Mexico.

In a history book of the early days of the New Mexico territory there is a description of the Rio Puerco. Sturgeon came up from the Rio Grande and into the Rio Puerco. It supported eel. There was a huge bosque of cottonwoods and other southwestern riparian trees. Today when you drive across the Rio Puerco it is a quarter-mile wide dry arrya with a few scattered salt cedars, and only after a heavy rain is there any water in it.

The San Pedro is called a riparian area in good condition. That does not mean that it is the way it was in its prime, but it is anticipated that the San Pedro retains 75 percent of its native flora. That is in comparison to the Pecos, for example, which has lost 95 percent of its, and of the Gila which has lost 90 percent of its, and the Rio Puerco which you could say has probably lost 100 percent of its.

The strengths of the bill that has passed the House protecting the San Pedro are that it achieves a balance between Congress telling the Bureau how to dot every "i" and cross every "t" and no guidance at all. It has some specific management direction such as limiting off-road vehicle use, such as the 15-year ban on grazing and a withdrawal from mining activities.

However, the general management of the area and the daily decisions are left up to the agency with some strong guidelines about the purposes and the fulfillment of those purposes. The question of whether or not this area should be withdrawn from grazing has been raised. There are several reasons why it should, particularly for the 15-year test period.

Currently the area is grazed, but only lightly. Those permits are not Federal permits, they are private contractual leases which will expire shortly. There is a body of scientific evidence that demonstrates that cattle grazing does have a damaging effect on riparian values. There are many areas in the West and in the Southwest to test riparian management with grazing, with both good grazing management and bad grazing management.

There are very, very few areas particularly of any length, particularly areas that are in good condition currently where one can determine what the absence of any grazing, not just grazing under good management, will bring about. The San Pedro is an opportunity to have that benchmark study.

The timing of this bill is quite critical, as well. The permits for the grazing are expiring. Some leasing for sand and gravel operations are about to expire. The management plan is under preparation. Now is the time that Congress should make its views known.

We urge the Senate to adopt H.R. 4811 as it passed the House and move expeditiously on it. Thank you.

[The prepared statement of Ms. Sease follows:]

SIERRA CLUB

330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

STATEMENT OF DEBBIE SEASE, WASHINGTON REPRESENTATIVE, SIERRA CLUB
ON BEHALF OF THE SIERRA CLUB AND THE WILDERNESS SOCIETY
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER AND RESOURCE
CONSERVATION OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
REGARDING S. 2442, ON SEPTEMBER 23, 1986

Mr. Chairman, Members of the Subcommittee, I appreciate this opportunity to testify on behalf of the Sierra Club regarding S. 2442, a bill to establish the San Pedro Riparian National Conservation Area . My testimony today also reflects the views of The Wilderness Society. Together our organizations consist of more than 528,000 individuals concerned with the protection of our environment for the benefit of present and future generations.

The intent of this bill is to set aside some 43,000 acres of the Upper San Pedro riparian ecosystem for federal protection and rehabilitation. This is an area rich in cultural and biotic resources, which deserve to be protected and preserved for future generations.

During the House consideration of H.R. 4811, The Wilderness Society and Sierra Club, along with other conservation organizations suggested changes in the legislation to increase the restorative, protective and enhancement capabilities of the bill. The Arizona delegation developed revisions which significantly strengthened the final version of HR 4811. We urge this Committee to adopt the House passed version of the bill and move it expeditiously through the Senate.

More than a decade ago, the Fish and Wildlife Service identified the San Pedro as a unique ecosystem suitable for inclusion in the National Wildlife Refuge System. Portions of the San Pedro have been proposed as Natural Areas to be preserved under the Arizona Natural Heritage Program. Portions have also been proposed as county, state, federal and international parks for the preservation of important historic and prehistoric resources.

All these proposals indicate the importance of the San Pedro as a biotic resource, supporting one of the greatest diversities of species of any locale in North America; and as a rich cultural resource, containing records of mankind's continuous habitation for more than 10,000 years, and the social interchanges between early peoples who used the San Pedro as a trade corridor between North and Central America. But, sadly, none of these proposals has come to fruition, and the San Pedro has become increasingly subject to the impacts of population pressure, including the trampling of vegetation, ORV damage to the landscape, harvesting of riparian trees for fuelwood, and vandalizing of cultural and paleontological sites.

HR 4811 brings together the mutual goals of most previous proposals, and offers an opportunity not only to restore the San Pedro Area to something like its natural conditions of diversity and productivity, but will also provide a benchmark for reasearch and evaluation of southwestern riparian ecosystems.

Rivers and their environs are very special in the Southwest, and very fragile. Without special care, they dwindle away into gullies and dry washes. Those that remain are survivors. In southeast Arizona, the San Pedro is the only one left in a relatively healthy condition of diversity and productivity. Unlike the Pecos River, which has been stripped of 95% of its estimated historic native flora, and the Gila, which has lost 90%, the San Pedro supports one of the longest stretches of riparian habitat in the Southwestern United States and retains some 75% of its native flora (USFWS 1985). It is a unique reminder of what our rivers used to be.

But none of our remaining desert rivers has survived without scars. Portions of the San Pedro are still relatively lush and rich with wildlife, but other parts have suffered drastic reductions in biotic diversity and productivity. Although in better shape than most southwest river systems, the San Pedro too has been adversely affected by a "concentration of agricultural, municipal and industrial development in river valleys [that] has reduced or destroyed both terrestrail and aquatic wildlife habitats" (Ohmart 1982). The word agricultural in that quotation should be understood to mean livestock ranching as well as the farming of vegetable crops.

A century ago the San Pedro supported a lively fishery, including one species of native fish that grew to several feet in length. Today the river is still perennial, but during dry seasons the surface water sometimes ducks under the riverbed and resurfaces at some distance downstream. Banks that used to be many feet apart are now sometimes separated by only a trickle.

The river is still alive and running, but it is not what it used to be; and if it reminds us of a rich past, it also reminds of us what we have lost, and of our present responsibilities to properly manage what little we have left. The forces that have reduced the size and diversity of the riparian system over the past hundred years are still at work; but besides the very real risks of pollution from agriculture, industry, military and civilian dumping; and the incessant; erosive pressure of livestock grazing; during the past two decades, the San Pedro system has also had to endure the effects of a population explosion as more and more people migrate to the sunbelt from the eastern and northern states.

The Arizona Department of Water Resources reports, for instance, that for several years now, excessive pumping has been overdrafting the groundwater and contributing to the San Pedro's decline (DWR 1986). Population growth has also brought the threat of subdivision, as the wooded riversides become more and more valuable in a vigorous real estate market. The acreage included in this bill was very nearly sold in small parcels as "ranchetts".

Some of these threats are already being dealt with. The subdivision threat, for instance, has largely been averted by putting most of the wet riparian area into public ownership under BLM management. If recent agreements between the U.S. and Mexican governments are kept by both sides, we will also avert some serious threats of air and water pollution from the Smelter Triangle south and east of the Conservation Area. Furthermore, the EPA has recently ordered the Phelps Dodge mine in Bisbee to stop contaminating tributaries to the San Pedro with toxic metals, and the State of Arizona has recently enacted two of the most progressive water quantity and quality laws in the nation. Local conservationists are working with BLM to guarantee protection of the San Pedro under the new Arizona statutes.

But these actions are more remedial than rehabilitative; they address specific acute problems rather than implementing a comprehensive plan for protection of the riparian system as a whole. HR 4811 can provide for that kind of comprehensive protection that biologists, anthropologists, conservationists and others have called for repeatedly over the past quarter century.

Our organizations fully support the proposal developed by the Arizona delegation and enacted in H.R. 4811 and urge rapid Senate passage of that bill. Thank you for your attention and consideration.

Senator WALLOP. We will certainly take a look at them, but I have got to tell you that a proposition that says there will be no grazing for 15 years says there will be no grazing ever again. You cannot go into the business and out of the business and back into the business, and bounce back and forth, and wait on the whims of people.

Personally, I do not think that is necessary to prove a point. If you are going to do that, at least be forthright and say it is banned forever, because nobody in business can sit around for 15 years and wait to be invited back and hope that they will be. It just does not make sense.

We will take a look at it and make our recommendation. I suspect you all will make your recommendations to some on the Committee and others not on the Committee. My own inclination is to make certain that special values are recognized in there and that that is part of the direction of the management scheme, but not to pick and choose amongst all of them.

Just so you know I am not trying to hide behind this podium, but my own inclination is that if it has been well managed it should continue to be well managed, and directing them to look at the special characteristics and attributes that this area possesses ought really to be enough. If that is what it is for—to manage it for the recreational and archaeological and paleontological riparian values—it seems to me that somewhere along the line when you are asked to say I believe that they can manage it, or that we will set up some kind of a citizens board to manage it and say we do not trust them to do it anymore.

Our job I think is to select the values that we wish to enhance, and not the means of enhancing. That is a personal view.

Thank you all very much. We appreciate it.

Ms. SEASE. Thank you, Mr. Chairman.

Senator WALLOP. Lastly we have Mr. Christopher Brown, Vice President and Conservation Director of the American Rivers Conservation Council on S. 2707 and H.R. 2826.

Welcome, Mr. Brown.

STATEMENT OF CHRISTOPHER BROWN, VICE PRESIDENT AND CONSERVATION DIRECTOR, AMERICAN RIVERS CONSERVATION COUNCIL

Mr. BROWN. Thank you, Mr. Chairman.

I wanted to thank you especially for the work your Committee has done on rivers this year with five rivers for study or designation for the National Wild and Scenic River System, and also the work on the Henrys Fork River. I do not want to be presumptive, but I still harbor the hope that there may be a little time left to work on the North and South Forks of the Kearn River in California before this Congress adjourns, but we have some things to work out on that still.

I am here today to address the Horsepasture River in North Carolina. I will be very brief. The Horsepasture, as I had the opportunity to see firsthand, is an absolutely remarkable river coming off the Blue Ridge escarpment. It is part of a family of rivers, in-

cluding the White Water, Shatuka, and some others that drop almost 2,000 feet over a very, very short distance.

It has got remarkable geologic features. It has got rare plants that are listed on the North Carolina National Heritage Program. I think the most remarkable thing from my point of view, just visually, is to see the water slides that are there. They are natural stone slides where people are plunging down with absolutely breathtaking daring 50 and 100 feet, sliding down to these pools of water, and not just sitting up but lying on their stomachs and shooting down. It is quite a spectacle.

The river, as others have testified, enjoys very broad support for Wild and Scenic designation at this point. I want to especially commend the Forest Service which has acted very expeditiously to arrange a land exchange so all the land will be in public ownership by the time the river is designated.

I would say, finally, this will be the shortest but by no means the least significant of the rivers in the whole National Wild and Scenic River System, and I urge the Committee to act expeditiously on it.

[The prepared statement of Mr. Brown follows:]

American Rivers Conservation Council
801 Pennsylvania Avenue, S.E., Suite 303, Washington, D.C. 20003-2155 202-547-6900

TESTIMONY OF CHRISTOPHER BROWN

VICE PRESIDENT and CONSERVATION DIRECTOR, AMERICAN RIVERS CONSERVATION COUNCIL

on

S. 2707, a Bill to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in North Carolina as a component of the National Wild and Scenic Rivers System

Before the Senate Subcommittee on Public Lands, Reserved Water, and Resource Conservation

Tuesday, September 23, 1986

Thank you Mr. Chairman, for the opportunity to testify on S. 2707 concerning the inclusion of the Horsepasture River in North Carolina into the Wild and Scenic Rivers System. I especially want to thank you and your committee for all your work this year on behalf of rivers. It is very exciting to see, as the 99th Congress comes to a close, that we will be adding a number of rivers to the federal system for the first time since 1984.

My name is Christopher Brown, and I am the Vice President and Conservation Director for the American Rivers Conservation Council. American Rivers is the only national conservation organization dedicated exclusively to protecting, as free-flowing natural systems, our common bounty of rivers and their associated landscapes. In our 13 year history, American Rivers has worked to protect 7000 miles of rivers under the Wild and Scenic Rivers Act and has actively assisted states and local groups with their river conservation efforts. American Rivers has over 7,000 members.

Resource Values

I had the opportunity to visit the Horsepasture this past August and was very impressed with the dramatic swath it cuts in the Blue Ridge escarpment in the 4.25 miles. The river cascades some 1700 feet within 4 miles creating five spectacular water falls. These five major falls range from 15 - 1000 feet in height. The presence of several large boulders in the river cause numerous lesser falls, cascades, plunge pools, and rapids. Boulders are just a sample of the outstanding geologic features on the Horsepasture. Present also are several rock outcroppings and formations, cliffs, and caves.

The watershed is just as impressive, serving as habitat to several unusual species of rhododendron and virgin timber stands. Lying within the boundaries of the Nantahala National Forest, the land is undeveloped with the only man-made influence being old trails. I understand that the USDA-Forest Service is in the process of a land exchange with Duke Power Company. Once this exchange is completed, the Forest Service will own all the land surrounding the 4 miles of river we are supporting for designation.

The area around the river receives extensive recreational use including hiking, camping, picnicking, swimming, and sliding down the rocks at two of the major falls. Hunting and fishing are also popular. The Horsepasture is classified by the North Carolina Wildlife Resources Commission as "Designated Trout Waters" and is managed primarily for brown trout.

History of Protection

American Rivers' effort to bring the Horsepasture under permanent protection reaches back to 1984. In September of that year, we testified at a public meeting sponsored by the North Carolina Department of Natural Resources and Community Development against the FERC application filed by Carrasan Power Company for construction of a hydro facility.

We also strongly supported then-Congressman Jamie Clarke as he introduced

legislation to make the Horsepasture a Federal Wild and Scenic Study River. The study received tremendous support in the Senate by both North Carolina Senators as well as Senator Strom Thurmond from South Carolina. We shared in the victory as the bill passed the Senate and was signed into law at the end of the 98th Congress.

Threats

Before us today is the opportunity to ensure the protection of the Horsepasture for all time. The same drop that makes the river so magnificent also makes it a prime candidate for hydroelectric development. As previously mentioned, in 1984, the passage of the Federal Wild and Scenic Study bill blocked the efforts of Carrasan Power to build a water project that would have diverted most of the water around the five falls to a power house below. This type of diversion would have destroyed not only the river's scenic and recreational values, but the trout habitat as well.

Even though the river now enjoys protection under the North Carolina Natural and Scenic Rivers System, this will not block future hydro development once the 3-year Wild and Scenic study is completed. We must preclude any future development threats which could alter the Horsepasture's outstanding and nationally significant values.

Comments on S. 2707

It is not our habit to recommend a river for federal Wild and Scenic status prior to the completion of the Forest Service's 3-year study. However, the Forest Service in its testimony before the House Subcommittee on National Parks and Recreation on April 29, 1986, did support the immediate designation of the Horsepasture.

Considering this support by the Forest Service, as well as the river being a part of the State of North Carolina Rivers System, 100% of the watershed being in public ownership, and the strong local support for federal designation, American Rivers recommends that the Wild and Scenic Rivers Act be amended to include the Horsepasture River.

The Horsepasture is not only important as a recreational resource for North Carolina and the Southeast, but is also an outstanding example of the natural values of a free-flowing stream with its unusual flora and geologic formations. It will have the honor of being the shortest river with the most outstanding qualities in the federal Wild and Scenic System.

Thank you, Mr. Chairman, for the opportunity to testify. I will be happy to answer any questions that you might have at this time.

Senator WALLOP. I see no reason why we cannot, if the Administration supports it and the recommended amendments.

Mr. BROWN. We have got rare unanimity, I think, on this one.

Senator WALLOP. It is rather pleasant in this Committee. That is not always the way, as you well know.

At any rate, thank you very much. I appreciate it. The Committee will act, if we can get a quorum, and we will have it out.

Mr. BROWN. Good. Thank you.

Senator WALLOP. That concludes the work of the Committee. Statements will be accepted. The hearing records will remain open for one week.

With that, the Subcommittee stands adjourned.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

[COMMITTEE NOTE.—Due to the voluminous nature of materials submitted for the record all additional statements and letters have been retained in subcommittee files.]

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